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18th CONGRESS,
2d Session.

[91]

MESSAGE

FROM THE

PRESIDENT OF THE UNITED STATES,

TRANSMITTING

A REPORT FROM THE SECRETARY OF STATE,

WITH COPIES OF

The Correspondence with the Government of France,

TOUCHING THE

INTERPRETATION OF THE EIGHTH ARTICLE OF THE TREATY

FOR

The Cession of Louisiana.

FEBRUARY 17, 1825.

Referred to the Committee on Foreign Affairs.

WASHINGTON:

PRINTED BY GALES & SEATON.

1825.

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To the House of Representatives of the United States:

I transmit herewith to the House a report from the Secretary of State, with copies of the correspondence with the government of France, requested by the resolution of the House, of the 25th of January last.

JAMES MONROE.

Washington, 17th February, 1825.



DEPARTMENT OF STATE,

Washington, 16th February, 1825.

The Secretary of State, to whom has been referred a resolution of the House of Representatives, of the 25th January, requesting that the President would "communicate to that House any correspondence in his possession, which he may not deem it improper to disclose, which has taken place between the Government of the United States and that of France, touching the interpretation of the 8th article of the treaty of the cession of Louisiana," has the honor of reporting to the President copies of the documents requested by that resolution.

JOHN QUINCY ADAMS.

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 3. Mr. de Neuville to Mr. Adams, 16th June, 1818, translation.
 4. Mr. Roth to same, 19th July, 1820, do.
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 16. Baron de Neuville to Mr. Adams, 30th do do trans.
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 20. Same to same, 15th October do do.
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No. 1.

Mr. Hyde de Neuville to Mr. Adams, dated Dec. 15, 1817.

[TRANSLATION.]

SIR: The Envoy Extraordinary and Minister Plenipotentiary of His Most Christian Majesty has received reiterated orders to ascertain the truth of the statement made by several masters of merchant ships, affirming that French vessels are not treated, in the ports of Louisiana, upon the footing of the most favored nations. Upon investigation, it not only appears that such is actually the case, but the undersigned has even found that several protests had been lodged in vain with the local authorities, against this manifest infraction of the 8th article of the Louisiana Treaty. He is well assured that this must have been the mere consequence of error, or of incorrect interpretation given, on the spot, to a clause which is absolute and unconditional by its own terms, and which can neither be limited nor modified, being the essential unlimited condition of a contract of cession, can neither be subject to limitation nor to any modification whatever. The Minister of His Most Christian Majesty persuades himself, that it will suffice thus to call the attention of the Federal Government to this affair, in order to obtain from its justice the reparation of an injury so very prejudicial to French commerce. He, therefore, requests of the Secretary of State that this his representation, made by order of his Court, be submitted as soon as possible to the President, in order that His Excellency may be pleased to issue orders to such effect that in future the 8th article of the treaty of 1803, between France and the United States receive its entire execution, and that the advantages granted to Great Britain in all the ports of the United States, be secured to France in those of Louisiana. The principle of justice here claimed cannot be denied, and must necessarily insure the reimbursement of the duties which have been unjustifiably levied upon French vessels in New-Orleans. The undersigned Minister expects, with entire confidence, the decision of the President; of which he requests the Secretary of State will enable him to inform his court as soon as possible: The Government of His Majesty desires, as soon as possible, to quiet the commerce of France, with regard to proceedings so contrary to its interests, and to the true spirit of the Louisiana Treaty.

The undersigned has the honor, &c.

G. HYDE DE NEUVILLE.

Mr. Adams to Mr. Hyde De Neuville.

DEPARTMENT OF STATE,

December 23, 1817.

The undersigned, Secretary of State has received and laid before the President, the note which he had the honor of receiving from the Envoy Extraordinary and Minister Plenipotentiary of France, complaining that French vessels are not, conformably to the 8th article of the treaty of cession of Louisiana, treated in the ports of that state, upon the footing of the most favored nation; and claiming, as a right, deducible from the same article, that French vessels should in future enjoy, in the ports of Louisiana, all the advantages granted to the English nation in all the ports of the Union.

The undersigned is instructed to say, that the vessels of France are treated in the ports of Louisiana, upon the footing of the most favored nation; and that neither the English nor any other foreign nation, enjoys gratuitous advantage there which is not equally enjoyed by France. But English vessels, by virtue of a conditional compact, are admitted into the ports of the United States, including those of Louisiana, upon payment of the same duties as the vessels of the United States. The condition upon which they enjoy this advantage is, that the vessels of the United States shall be admitted into the ports of Great Britain, upon payment of the same duties as are there paid by British vessels.

The 8th article of the treaty of cession, stipulates that the ships of France shall be treated upon the footing of the most favored nations in the ports of the ceded territory; but it does not say, and cannot be understood to mean, that France should enjoy as a free gift, that which is conceded to other nations for a full equivalent.

It is obvious, that, if French vessels should be admitted into the ports of Louisiana, upon payment of the same duties as the vessels of the United States, they would be treated, not upon the footing of the most favored nation, according to the article in question, but upon a footing more favored than any other nation; since other nations, with the exception of England, pay higher tonnage duties, and the exemption of English vessels is not a free gift, but a purchase, at a fair and equal price.

It is true, that the terms of the 8th article are positive and unconditional; but it will readily be perceived, that the condition, though not expressed in the article, is inherent in the advantage claimed under it. If British vessels enjoyed in the ports of Louisiana any gratuitous favor, undoubtedly, French vessels would, by the terms of the article, be entitled to the same.

A more extensive construction cannot be given to the article, consistently with the Constitution of the United States, which declares that "all duties, imposts, and excises, shall be uniform throughout the United States; and that no preference shall be given by any regulation of commerce or revenue, to the ports of one state over those of another."

It would be incompatible with other articles of the treaty of cession itself, one of which cedes the territory to the United States “*in full sovereignty*,” and another declares that its “inhabitants shall be incorporated in the union of the United States, and be admitted as soon as possible, according to the principles of the Federal Constitution, to the enjoyment of all the rights, advantages and immunities of citizens of the United States.” If France could claim *forever*, advantages in the ports of Louisiana, which could be denied to her in the other ports of the United States, she would have ceded to the United States, not the full, but an imperfect sovereignty, and if France could claim admission for her vessels forever, into the ports of Louisiana, upon the payment of duties not uniform with those which they must pay in the other ports of the United States, it would have been impossible to have admitted the inhabitants of Louisiana, according to the principles of the Federal Constitution, to the enjoyment of all the rights, advantages, and immunities, of citizens of the United States.

The undersigned is happy to be authorized, in concluding this note, to add, that the Government of the United States is willing to extend to France, not only in the ports of Louisiana, but in those of all the United States, every advantage enjoyed by the vessels of Great Britain, upon the fair and just equivalent of reciprocity; and that, in the mean time, the vessels of France shall be treated in all the ports of the United States, including Louisiana, on the footing of the most favored nation; enjoying gratuitously every favor indulged gratuitously to others; and every conditional favor upon the reciprocation of the same to vessels of the United States in France.

He prays the Minister of France to accept the assurances of his very distinguished consideration.

JOHN QUINCY ADAMS.

No. 3.

Mr. de Neuville to Mr. Adams.

[TRANSLATION.]

Washington, 16th June, 1818

SIR: I have had the honor of receiving your note in answer to mine of the 15th December last, concerning the non-execution of the 8th article of the Louisiana treaty.

I took care duly to communicate the proposal made by the Federal Government, to extend to France, not only in the ports of Louisiana, but even in all those of the United States, the advantages therein enjoyed by British vessels on a footing of absolute reciprocity. His Majesty is ever disposed not to neglect any thing that can tend to rivet the bonds of friendship of the two countries, and to improve

their commercial intercourse, and will, no doubt, examine this proposal with very particular attention.

In the mean time, as it would be neither just nor proper, that the execution of the clauses of a contract already made and completely concluded, should be dependent on an arrangement, which, as yet, is only in contemplation, and, as the enjoyment of a perpetual unconditional right, should never in any case be blended with reciprocal advantages, or concessions which time annuls, and which accidental causes may modify or destroy; as France claims nothing but what she knows is due to her, and as she is well persuaded that the Federal Government will never deny what it is conscious of owing; there is much reason to hope that the following observations will suffice to establish our right, and thus remove every obstacle to its free enjoyment. I will add, that fresh orders from His Majesty make it my duty to neglect no means of obtaining, as soon as possible, this act, whose accomplishment must be expected from mature deliberation on the question, and is warranted by the acknowledged equity of the Federal Government.

You have stated, sir, that *French vessels are treated in the ports of Louisiana upon the footing of the most favored nation; and that no foreign nation enjoys there any gratuitous advantage which is not equally enjoyed by France.* You add, sir, that, *if British vessels are allowed in the ports of the United States, certain advantages which American vessels likewise enjoy in the ports of Great Britain, it is by virtue of a conditional compact founded on reciprocity of advantages.*

Finally, after recalling the 8th article which stipulates expressly, that, in future, and for ever, French vessels shall be treated upon the footing of the most favored nation, in the ports of the ceded territory: you observe that the article does not say, and that it could not be understood to mean, that France should enjoy as a free gift, that which is conceded to other nations for a full equivalent.

I shall, in the first place, have the honor to observe, that France asks not for a *free gift*: she claims the enjoyment of a right, which it is not even necessary for her to acquire, since it proceeds from herself, being a right which, when she consented to dispose of Louisiana, she had power to reserve for the interest of her trade, and the actual reservation of which is established, not implicitly, but in the most precise and formal terms, by the 8th article of the Louisiana treaty.

France, I repeat it, asks no free gift, since the territory ceded is the equivalent already paid by her for all the clauses, charges, and conditions, executed, or which remain to be fulfilled, by the United States; and which, principally, consist in the 7th and 8th articles of the Treaty, and 1st of the Convention.

If the 8th article of the Louisiana Treaty had no other object but that of securing to France a conditional advantage in the ports of Louisiana; if such had been the true spirit of this clause, and finally, if the American negotiators had been firmly convinced that this reservation of the French Government was not absolute, but was

merely one of those customary reciprocal concessions which occur in almost all Treaties of Amity and Commerce; it is likely that no pains would have been taken to frame the article, so as absolutely to contradict the intention of the contracting parties; and it stands to reason that, if such had been their views, the terms usually employed in other Treaties would have been employed here also, instead of so precise a stipulation of an unconditional and perpetual advantage in favor of France. In all the Treaties between France and the United States, the condition of reciprocity is positively mentioned: they all expressly say, that the contracting parties shall reciprocally enjoy such favors as shall be conceded to other nations, *freely, if freely granted to other nations, or, upon granting the same condition, if conditionally granted.* How shall we account for the strange and unusual construction here adopted? Who would admit the possibility, or likelihood, of an omission on the part of Negotiators, the object of whose mission was not to stipulate doubtful clauses, subject to discussion, but, on the contrary, as it is expressly stated in the Treaty, “to remove all sources of misunderstanding” relative to objects of discussion, and to strengthen the union and “friendship which, at the time of the said Convention, was happily “re-established between the two nations?”

And furthermore, how shall we reconcile the silence observed by the Senate in 1803, respecting this unconditional and unlimited favor secured to France, with the positive refusal of the same House, in 1801, to ratify a convention founded on reciprocity of advantage, unless on the express condition that it should be limited to eight years?

The natural inference, the only explanation of all this, is, that, in 1801, the question was on a convention or treaty of amity and commerce, while, in 1803, it was on a contract of sale or cession, which instruments are of so different a nature as not to admit the application of similar principles and consequences; nor can it be supposed that the negotiators of the treaty of 1801 had forgotten to mention that the citizens of the two nations should reciprocally be treated, each, in the ports of the other, upon the footing of the most favored nations, since this principle of reciprocity was not only the general basis, but was even, in almost every instance, the *sine qua non* of preceding commercial conventions.

But the negotiators of the treaty of 1803, knew full well that they were not commissioned to settle the commercial or navigating interests of the two countries, and were merely authorized to make a contract of sale or cession, which, however important, from the value of the object ceded, was not the less subject, like every conveyance between individuals, to certain and invariable rules of construction and interpretation. A contract of sale admits of no implication, (*sous entendu*) it is a plain simple transaction, by which one party is bound to deliver a certain property, and the other party to receive it, on certain charges and conditions more or less rigorous.

Those clauses and conditions cannot be interpreted otherwise than according to the terms in which they are expressed in the contract;

nor can they be annulled or modified except by the consent of both parties. Their entire execution is, indeed, so rigorously binding, that it *alone* may be said finally to seal the transaction. But the article would appear to you, sir, to be, in this, its only natural construction, inconsistent with the constitution, which declares that *all duties, imposts, and excises, shall be uniform throughout the United States.*

It would seem to me that this clause of the constitution has no other reference than to the interior administration of the country, and that it cannot be proper to consider, in the light of a mere tax or impost, that which is an express condition of the sale or cession of a territory, and is one of the clauses of a treaty which itself becomes a law of the United States.

You express an opinion, sir, that the 8th article, if interpreted according to its grammatical and literal sense, *would be incompatible with another article of the same treaty, which cedes the territory to the United States in full sovereignty, arguing that, if France could claim forever advantages in the ports of Louisiana, which could be denied to her in the other ports of the United States, she would have ceded to the United States not the full, but an imperfect sovereignty.*

Allow me to observe, that this last point of the argument is answered by your own decision, admitting that, if *British vessels enjoyed, in the ports of Louisiana, any gratuitous favor, undoubtedly French vessels would, by the terms of the treaty, be entitled to the same.*

This admits the possibility of an imperfect sovereignty, and supposes an instance in which France might be entitled to claim, in the ports of Louisiana, a favor which could be denied her in the other ports of the United States.

Moreover, if the United States have, by the constitution, a right to grant to other nations gratuitous favors in their ports, it follows, from your own interpretation of the perpetual reservation made by France, that, in order to deprive her of the right so reserved, and to avoid rendering, thereby, the sovereignty of this republic imperfect, the Federal Government must not grant to other nations any gratuitous concessions in the territory ceded by France, though it should be found expedient so to do, and advantageous to their commercial interest and policy. In other words, the Federal Government, by consenting to the eighth article, would have deprived itself of a real right of sovereignty. In the preceding hypothesis, the difficulty is merely eluded and not removed. The right is not the less unqualified, and consented to *forever.*

But will it be said the constitution allows no preferences among the different states; they are all, by the federal compact, subject to the same charges, and are to enjoy the same privileges. It would appear to me, sir, that this perfect uniformity is applicable only to a state when it has once become a state. The regulations made for the family cannot be meant to extend beyond its circle; and the law which established such regulations never can have blended the circumstances pre-existent to the admission of a new member (much less the very conditions of admission) with the rights, charges, and privileges,

which are the consequence springing therefrom: thus did Congress judge: to them it appeared that the instrument of sale or cession of Louisiana had no analogy to a commercial regulation, or to a distribution of taxes; and they admitted, without discussion, the 7th and 8th articles of the treaty, because, if the constitution does not allow that a territory, when once admitted into this Union, be marked by any distinct charges or advantages, it does not, on that account, prevent the fulfilment of clauses exacted and consented to as conditions of its admission. In all this there is neither exception nor preference; it is the mere and simple execution of a contract freely and lawfully entered into. But the third article says, that the inhabitants of the ceded territory shall be incorporated into the Union, and admitted, as soon as possible, to the enjoyment of all the advantages and immunities of citizens of the United States.

This is true, and such, no doubt, was the intention of the contracting parties. They expressly agreed, that this admission should take place as soon as possible; but most assuredly it was meant that this should be done in conformity with the clauses and conditions mentioned in the treaty; and if the 8th article could have been considered as an obstacle to the execution of the third article, it would equally have been so thought of the 7th; this article was, however, never contested; it even received, during the twelve years of its duration, or should have received, its full and entire operation by virtue of the regulating act of Congress, of the 24th of February, 1804.

France and Spain still enjoyed in 1815, in Louisiana, the rights and privileges secured by the 7th article, which rights, by the very terms of the treaty, never can be granted to any other nation. France and Spain were in the full enjoyment of these exclusive rights and privileges in 1815: and yet, in 1812, the stipulations of the 3d article was fulfilled, the territory of Louisiana was admitted as a state into the Federal body, and this new state was received without restriction, on an equal footing with the original states, in all respects whatever.

If, therefore, there were at this day any contradiction between the 3d and 8th articles, how could Congress, in 1812, surmount the objection arising from the much stronger inconsistency, which, on this supposition, must have existed between the 3d and 7th articles?

When Congress made Louisiana a member of the Union, before the expiration of the 12 years, it was judged that such a compliance with the conditions of a treaty, was by no means incompatible with the exercise of the full and entire rights of sovereignty. Perhaps it may be answered, that the 7th article granted only temporary privileges, and that the eighth article has no term fixed to it. To me, it appears that the words *forever*, change nothing but the duration of the privilege, without, in the least degree, altering the nature of the question. Under a constitutional system, nothing can be done, ordered, or consented to, that would infringe, *even* but for a limited term, the established laws of the country. All the transactions of Governments must be legal. If, therefore, the provisions of the Constitution which regulate the existence of a state after its admission, were applicable

to the conditions on which it is to be admitted, it would, in such case, have been no less impossible in 1812, than at the present day, to grant to the inhabitants of Louisiana the rights, privileges, and immunities, of citizens of the United States, since, on that supposition, they must, in common with the other states, have had a right to make France and Spain pay, in their ports, higher tonnage duties than those paid by the citizens of the United States; and since the Federal Government had no right, at that time, to grant, in the ports of the ceded territory, to other nations, the privileges therein secured to France and to Spain. France did intend to cede the territory of Louisiana to the United States forever, and in full sovereignty: but sovereignty does not consist in the enjoyment of every right and privilege: it lies in the pre-eminent important authority to enforce their observance. When the French Government ceded Louisiana, it ceased to be the sovereign of the country, but it did not cease to hold property therein, since it reserved a right or privilege: for, a privilege acquired or reserved, is property as sacred as an annuity, as a rent charge, or any other.

France, therefore, claims only the enjoyment of what is her property; giving her possession of this lawful right far from rendering the sovereignty of the United States imperfect, would seem, in a measure, only to make it more complete, since it is certain that the right claimed by France, is one of the essential conditions of the cession made by her of that sovereignty. It may, perhaps, be answered, that there is some difference between the contracts of nations with other nations, and a sale made by one individual to another. I see very little, I confess, on the score of equity, the rules of interpretation being in all cases alike applicable to every human transaction. By the law of nations, it is an invariable rule that treaties or contracts, of whatsoever nature, should be understood according to the force and meaning of their expressions; and nothing surely can be more unconditional or more clearly expressed than the following clause: "In future, and forever, after the expiration of the 12 years, French vessels shall be treated upon the footing of the most favored nations in the ports of the said territory." *In future and forever* are expressions free from all ambiguity. *After the expiration of the 12 years*, these words prove, that the treatment or privilege secured by the 8th article, is to follow without condition or limitation of time. That of the 7th article, *French vessels shall be treated*, does not mean *may be treated*: but that they shall undoubtedly and positively be treated upon the footing of the most favored nation. And it makes no difference whether that treatment be the consequence of a gratuitous or of a conditional concession; the article has no restriction; it expressly states, French vessels shall be treated upon the footing of the [most] favored nations. The consequence is, that French vessels are, without condition, to be treated, in the ports of Louisiana, upon the footing of the vessels of Great Britain, which is at this time the most favored nation. I think I have proved, sir, that to demand an equivalent of France, because England has given one, would, in a mea-

sure, be requiring her to purchase what is already her own property, and obliging her to pay twice for the same thing.

I think I have also proved, that the sovereignty of the United States is, and will still remain, entire and perfect, such as it was ceded by the treaty of 1803; although France be put into possession of that right, which is secured to her *in future and forever*. I could cite many examples of analogous privileges, which never were considered as impairing the sovereignty of nations. But it appears to me, that the best of all arguments that can be addressed to the equity and honest feelings of the American Government, is, that France claims only her lawful due and right; that the title establishing it is worded in terms of such force and precision, as must suffice to remove every doubt, and absolutely to solve the question.

The claim which I have the honor to address to you, sir, being entirely dependent on the Executive authority, I cannot but hope, I shall soon have to inform my Court, that the President has been pleased to issue such orders as will secure in future the execution of the 8th article of the Louisiana Treaty, and the immediate reimbursement of the duties which have been unjustifiably levied to this day.

I have the honor to be, &c.

G. HYDE DE NEUVILLE.

No. 4.

Mr. Roth, Charge d'Affaires of France, to the Secretary of State.

TRANSLATION.

LEGATION OF FRANCE TO THE UNITED STATES,

Washington, July 19, 1820.

SIR: I learn by a letter from his Majesty's Consul at New Orleans, dated 15th June, the time when the law, establishing a new duty of tonnage upon French ships, came to be known in that city, that the officers of the Custom House there appeared to be of opinion that this law ought to be put into execution in Louisiana, as well as in the other parts of the Union, because it made no exception; and that these agents of the public revenue made their dispositions accordingly. The law of 15th May, in question, does, in fact, point out no exception, and even has these words, "any act to the contrary notwithstanding."

But this disposition, implying an abrogation of anterior laws belonging to the duty of the state, cannot be applied to treaties and contracts of nation with nation, which are without the reach of interior legislation, and form another distinct law, which can only be modified by mutual consent by new treaties between the contracting parties.

This is paramount, and understood in all the private acts of nations.

The treaty of cession of Louisiana says, positively, "whereas it is known and known, after the termination of the treaty, the duty of France shall be limited upon the finding of the most favored nation in the ports above mentioned."

Passing by the various discussions upon this article, and in what manner the word *favor* is understood, there can be no doubt of the sense which it expresses for the present case.

The new duty of tonnage established on French ships exclusively, places them in a state of gross inequality in regard to the duty of other nations; even here there is no question of a favor refused, but of a charge imposed. What regards Louisiana, is exactly contrary to what is guaranteed for ever and ever by the two articles.

Relative to the state of inequality, in which the law of 15th May has placed French navigation in the ports of Louisiana, I shall observe, in passing, that there is a great error in the statements which have been employed in Congress, and in the printed correspondence of Mr. Calhoun, to justify this measure.

It is pretended, that its aim is to counterbalance the discriminating duties established in France. But these duties are applied in custom to all foreign nations, and do not place the navigation of the United States in our ports upon any footing of inferiority, with regard to other nations; whilst the new duty of tonnage imposed in America solely upon French ships, places her navigation of France, with regard to other nations, in such a state of inferiority, that it is equivalent, if the law concerned, to a real exclusion of our ships from the ports of the United States. This is any thing but a compensation based upon reciprocity. Another disposition of this law, which would give it a character difficult to conceive, if it were not supposed to arise from inadvertence, is the short time assigned for its execution. In America, a law made on the 15th of May, against a power of Europe, cannot be put into execution on the 1st of July, that is only forty-five days from the date, without impairing the security granted to commerce; and it is not from a power essentially commercial, that an example so dangerous, given with deliberation, ought to be apprehended. It must be remembered that the particularly arises solely from the considerable lapse of time between the promulgation of the law and its adoption. But it is nevertheless a test with which our commerce by sea is threatened, and I expect strong remonstrances to the next arrival of French ships, unless instructions, agreeing to returned usage in this regard, are given to the officers of the customs, for ships that have sailed before the promulgation of the law, in the place whence they have departed.

It is not my intention, Sir, to pursue, at present, the observations already contained in the letter of his Majesty's Minister, dated 24th May, upon this question, in general, nor upon the discussion, previously raised, concerning the treaty of cession of Louisiana. I shall wait, upon these two subjects, for your answer, and such instruc-

tions as may be directly addressed to me by my Government. But, as to the particular subject which I have the honor of submitting to you, the execution of the law of tonnage in the ports of Louisiana, notwithstanding an express stipulation of a treaty which this law cannot touch, this makes a part of my natural duties, and wants no special instructions for requiring my interference. The new law had only arrived in Louisiana at the moment I was written to. I must think that there was a mistake, or a want of sufficient instructions in the opinion then expressed by the officers of the customs. Before answering his Majesty's Consul, upon the conduct which he ought to pursue, I have the honor of praying you to be pleased to inform me on a point of such importance, in the relations and ties existing between France and the United States.

I have the honor to offer you, Sir, the respectful assurance of my high consideration.

ROTH,

Chargé d'Affaires, ad interim.

No. 5.

Extract of a letter, No. 155, from Mr. Gallatin (communicating substance of a conversation with M. Pasquier,) to Mr. Adams, dated

31 July, 1820.

"An allusion was made in the course of the conference, to the claim of the French, to be treated, without any equivalent, at New Orleans, in the same manner as the British now are. I did not know of this difficulty till it was occasionally mentioned in conversation by Mr. Pasquier. The pretension appears to me altogether untenable; but I would have wished to know what answer has been given at Washington, to the reclamations of the French Minister, and what are the President's intentions on that subject."

No. 6.

Extract of a letter from Mr. Roth, Chargé d'Affaires of France to the Secretary of State, dated 5th August, 1820.

[TRANSLATION.]

"The letter which I had the honor of addressing to you on the 18th of last month, was intended to represent that the law of 15th May 1820, which established upon French ships, in the ports of the United States, a tonnage duty different from that which is levied upon other foreign ships, could not be applicable to French vessels in the ports of

Louisiana, agreeably to the 8th article of the Treaty of cession, which runs thus:

“Article 8. In future and for ever, after the expiration of the twelve years, French ships shall be treated upon the footing of the most favoured nation in the Ports above mentioned.”

I ought to confine myself to the citation of the text, upon a condition so clearly, so positively expressed, in a special clause of a Treaty of cession, of which all the conditions together, and each of them in particular, are equally obligatory and necessary to the validity of the contract. I have not had the honor of being informed of the measures which the Federal Government has taken to enforce, in this point, the execution of the Treaty of cession, agreeably to the obligations contracted by the Treaty itself, notwithstanding every law to the contrary. This care of protection belongs to the power which has made the engagement. As regards the King's Legation, I have done, what was its duty for the preservation of rights, by demanding that these measures should be taken, and by prescribing to his Majesty's consul at New Orleans, who expected an answer, to protest against every exaction which might be made, by the Custom House, from French vessels beyond what is received from ships belonging to the most favoured nations, but not to go on, if his protest remain without effect, till it had been referred to the authority which signs and maintains the Treaties. In this I have only conformed to the instructions formerly addressed in a similar case concerning the same 8th article of the Treaty of cession of Louisiana.”

No. 7.

Extract of a letter from Mr. Gallatin, to Mr. Pasquier, dated 15th August, 1820.

“I have in this letter, confined myself to that subject which, from the present situation of the commercial relations of the two countries, requires the most immediate attention. But I must at once state that, having no other knowledge of the difficulties in the execution of the 8th article of the Louisiana convention, than what is derived from your Excellency, and having received no communication whatever on that subject from my Government, it is not in my power to discuss it at this time.”

No. 8.

Extract of a letter, No. 24, from Mr. Adams to Mr. Gallatin, dated 24th August, 1820.

“I had the honor of receiving, yesterday, your despatches, No. 148, 149, and 150, with their enclosures. The preceding numbers

had been received before. The last of your letters being dated the 6th of July, I am in hopes that Mr. Hyde de Neuville, who sailed from Annapolis on the 1st or 2d of June, must have arrived in France within a very few days afterwards. He was the bearer of my letter to you, No. 20, and, by his personal observation, was aware of the friendly disposition towards France with which the act of Congress, of the 15th of May, was passed. The President will much regret the circumstance, if it should be viewed by the French Government with a different spirit. The duty of 100 francs per ton, upon American vessels, if laid, will, probably, not have very extensive effects, shipments to France in American vessels having already in a great measure ceased.

“ It is sincerely hoped by the President, that this counteracting and countervailing system will give way to the disposition for an amicable arrangement, in a conciliatory spirit, and with a view to the interests of both parties.

“ The temper which has been manifested in France, not only on this occasion, but in relation to *all* the just claims of citizens of the United States upon the French Government, could not possibly terminate without coming to a crisis; and, at the same time that a positive rejection of the most indisputable demands of our citizens for indemnity was returned for answer to every note which you presented in their behalf, upon the untenable pretence, that the Government of the Bourbons cannot be responsible for the outrages of its immediate predecessors, claims equally untenable were advanced, and reiterated with the most tenacious perseverance, of privileges, contrary to our constitution, in the ports of Louisiana, founded on an inadmissible construction of an article in the treaty for the cession of Louisiana.

“ If the construction contended for of that article by France were even correct, how can the present Government claim any advantage from a compact made with Napoleon, after an explicit declaration, that they hold themselves absolved from all obligation of indemnities due to the United States and their citizens for his acts? I mention this now, because Mr. Roth informs me that he has directed the French Consul at New Orleans to *protest* against the execution of the act of the 15th of May, 1820, specially in the ports of Louisiana. There was a long and elaborate note from Mr. de Neuville on this subject, to which a distinct and explicit answer was given by me. That minister replied; but, as there was nothing new in the shape of argument in his second note, a second answer from me was postponed, merely for the purpose of avoiding altercation, where it could be no possible object to us to have the last word. The pretence is, that, by the eighth article of the Louisiana Treaty, French vessels are to be forever treated in that province on the footing of the most favored nation; and, on the strength of this, they claim to be admitted *there* paying no higher duties than English vessels. Our answer is, that English vessels pay there no higher or other duties than our own—not by *favor*, but by *bargain*. England gives us an equivalent for this privilege; and a merchant might as well claim of another, on the

score of equal favor, that he should give a bag of cotton or a hog-head of tobacco to *him*, because he had *sold* the same articles to a third, as France can claim as a gratuitous favor to her that which has been granted for valuable consideration to Great Britain. The claim to which we admit that France is entitled under that article, is to the same privilege enjoyed by England, upon her allowing the same equivalent. That is completely and exclusively our treatment of the most favored nation, and to that we are not only willing, but desirous of admitting France. But even to that she can have no pretence while she refuses to be responsible for the deeds of Napoleon. If she claims the benefit of his treaties, she must recognize the obligation of his duties, and discharge them."

No. 9.

*Extract of a letter, No. 161, from Mr. Gallatin to Mr. Adams, dated
September 19, 1820.*

"On the 12th inst. Mr. Pasquier invited me to a conference for the same day, in which, to my great astonishment, he stated, that the King's Government considered the discussion of the 8th article of the treaty, of the 30th of April, 1803, as inseparable from that of the discriminating duties, since France claimed, under that article, an exemption in Louisiana from our new tonnage duty, and generally from all those to the payment of which any other nation was not liable. I expressed my surprise at this determination, which, since I was not instructed on that subject, must, for the present, put an end to the negotiation. I said that what rendered it more extraordinary that a question, which had heretofore been treated apart from all others, should now be made an obstacle to the adjustment of other difficulties, affecting all the commercial relations of the two countries, was the silence which had, at first, been preserved by France on that point. The first convention between the United States and Great Britain, made in pursuance of the act of Congress of March, 1815, and by which the discriminating duties were reciprocally abolished on both sides, would have expired in 1819. It was renewed for ten years in the year 1818, without our Government having had any notice of this claim on the part of France, although the first convention had then been in force for more than two years and a half. I added, that if, according to my former suggestion, the negotiation should be now transferred to Washington, I thought it my duty to express my conviction that the Government of the United States would certainly consider the construction of the article, for which France contended, as altogether inadmissible. Mr. Pasquier accounted for the delay in claiming the privileges to which France thought herself entitled, by the peculiar situation in which she was placed, during the period to which I alluded, and which had prevented her Government from at-

tending to any other than her internal affairs, or her European concerns. As he intimated that the determination not to separate the discussion of the article in question, from that of discriminating duties, was taken, I requested him to communicate it in writing, by answering my letter of the 15th of August. This he promised to do, and I have the honor to enclose copies of the letter which he accordingly wrote to me on the 18th, and of my answer of the 15th instant. You will perceive that the object of this answer is to impress on this Government the necessity of desisting from this preposterous claim, if they intend to bring the negotiation to a favorable result, either here, or at Washington.

“ Mr. Hyde de Neuville called on me on the evening of the 15th, and expressed his regret that I had not succeeded in concluding, at least, a provisional arrangement, and the reluctance he felt to be obliged to leave France at this time. I told him that he must be sensible that the failure could not be ascribed to me. Whatever might be my view of the subject, however disposed to listen to the arguments which might be adduced by the French Government, it was evident, that a discussion of the 8th article was useless, since it was evident that I could not, without special instructions, accede to the construction assumed by France. It was, therefore, equally fair, and calculated to avoid unnecessary delays, to have declared at once, what was the fact, that, not being instructed on that subject, I could not discuss it. I would add, that this was the only reason why I had avoided the discussion, that the pretension set up by his Government appeared to me altogether untenable, and that little more seemed necessary to repel it, than merely to state the question. This led to a desultory conversation on the nature of that claim, of which I will attempt to give the substance, although I am aware that I may not have fully understood his reasoning, and that, having already discussed the question with him, it must be more familiar to you than to me.

“ Mr. de Neuville's arguments appeared to me to be drawn less from the natural and obvious meaning of the article, than from collateral circumstances. He appealed to the intentions of the negotiators of the treaty of 1803, which he considered as susceptible of proof, and said, that the condition, stipulated in the 8th article, was the essential compensation made to France; and, in fact, the real price paid by the United States for Louisiana; and that the eighty millions of francs were but an accessory. He mentioned the insertion, in some other treaty, of expressions limiting a similar provision to the sense for which we contended, and insisted that their omission in the article in question, was fatal to our construction of it. He alluded to a supposed inconsistency of the article with the constitution of the United States, which, if it rendered it impossible for us to comply with that provision of the treaty, made it necessary that we should, in lieu of it, make some other concession or compensation acceptable to France.

“ This last argument was not perfectly intelligible to me, and it might have been inferred from it, that the claim was set up only for

the purpose of obtaining concessions in other respects. I observed, that any difficulty arising from a supposed inconsistency between our Constitution and the Louisiana treaty, was a concern of our own; that I did not perceive any, as the Constitution of the United States became applicable to Louisiana, subject to any exception to be found in the instrument by which we had acquired that territory; and that, in point of fact, the 7th article of the treaty had, during twelve years, been carried into effect without any difficulty, although it gave to France and Spain, privileges at New Orleans, which they enjoyed in no other port of the United States. We could not at this time, make a new treaty to that effect. I saw nothing that prevented the execution of that of 1803, according to its strict construction, which the United States could not at present, even if they were so disposed, enlarge in favor of France.

“Being unacquainted with the facts from which Mr. Hyde de Neuville inferred the intentions of the negotiators, I could form no opinion on that point; but I insisted, that whatever they might have been, it was not by these that the treaty must be construed; and that the two nations were bound by the expressions, and only by the expressions, used in the several articles, such as they had been ratified by the supreme authorities on both sides. As to any explanatory words which might have been used in some other treaty, whatever their effect might be on that treaty, their omission could not alter the obvious meaning of the 8th article of that by which the United States had acquired Louisiana; and the only question was, what was that meaning? The article simply provided, that French vessels should forever be treated upon the footing of the most favored nations in the ports of Louisiana. Now there were not, properly speaking, any *most favored nations* in the United States.

“Congress had, by a general law, proposed to all the nations with whom they had any commerce, a *mutual* repeal of discriminating duties. Every nation might have accepted that proposal, and it was in the power of France to avail herself of it whenever she pleased.”

“The plan had been carried into effect with several powers, either by treaty stipulations, as was the case with Great Britain and Sweden, or only by an understanding, or mere municipal regulations, as in the case, of the Netherlands and of the free towns of Germany. In every case, the repeal was mutual, and the consequence of the general offer made by the United States. In every case, the vessels of the nation which France now considered as more favored than herself, were put, in all the ports of the United States, including those of Louisiana, on the same footing as American vessels, on the express and reciprocal condition that American vessels should, in the ports of that nation, be treated on the same footing as indigenous vessels. What France claimed was, to enjoy the privilege without fulfilling the condition on which it was granted; that her vessels should be treated, in Louisiana, on the same footing as American vessels, whilst American vessels coming from Louisiana should, in her ports, continue to be subject to any discriminating duties she might be pleased to impose. She asked,

in fact, to be treated not as favorably, but more favorably than the nations she called most favored. The stipulation to place a country on the footing of the most favored nations necessarily meant, that, if a privilege was granted to a third nation for an equivalent, that equivalent must be given by the country which claimed the same privilege by virtue of such stipulation. A different construction implied a contradiction with the terms of the stipulation.

It was true, I allowed, that there were cases in which a difficulty might arise, that is to say, if a privilege was granted by the United States to a third nation, in exchange for some favor or equivalent of a different nature from the privilege granted, and which France could specifically give. But this was not the present case; not only France could give the equivalent, but this equivalent was of the same nature with the privilege granted, and both were so intimately connected, that one could not be separated from the other. The moment an American vessel should cease to be treated, in the ports of Great Britain or of the Netherlands, as a British or Dutch vessel, the British or Dutch vessels, as the case might be, would at once cease to be treated as American vessels in the ports of the United States. I have found, since my conversation with Mr. Hyde de Neuville, that the treaty to which he alluded was that of commerce between the United States and France of the 6th February, 1778: by the 2d article of which, it is agreed, that neither of the contracting parties shall grant any particular favor to other nations, in respect of commerce and navigation, which shall not become common to the other party *who shall enjoy the same favor gratuitously, if the concession was gratuitous, or on allowing the same compensation, if the concession was conditional.* These last words, inserted for greater caution, define what was meant by that stipulation: and if any inference was to be drawn from them, it would be, that the two nations had, in their first treaty, thought proper to state explicitly what they intended by the clause, of being placed on the footing of other (or most favored) nations, and that this explanation having once been given, the same construction must ever after be given to clauses of a similar nature, without its being necessary to repeat these explanatory words. And they have been accordingly omitted in every subsequent commercial arrangement between the two countries, as well in the 6th article of the convention of the 30th September, 1800, as in the 8th article of the Louisiana treaty. But these words are mere surplusage; the clause would have precisely the same meaning without as with them; and their omission in an article of a subsequent treaty, cannot, as I had observed to Mr. de Neuville, alter the only construction of which that article is susceptible.

“In answer to the objection that the article would, according to our construction, be of no value to France, I answered generally that it would fulfil its avowed object, which was to enable her to trade at all times to New Orleans, on terms not more, but as advantageous, as any other nation. It might be our interest to agree to a mutual repeal of discriminating duties, or to any other mutual commercial privilege with England or some other nation, and not with France.

But if we had made such an agreement, France had a right, on fulfilling the reciprocal condition, to claim the same privilege in Louisiana, however inconvenient that might be to us. We might be compelled, by an unsuccessful war, or induced by political considerations, to grant some gratuitous favor to a third nation: and France would, in that case, immediately participate gratuitously in Louisiana, in the same favor, although we had no motive for granting it to her. The article did confer substantial and permanent advantages on her, without recurring to the construction for which she contended."

No. 9.—a.

Baron Pasquier to Mr. Gallatin.

[TRANSLATION.]

PARIS, September 13, 1820.

SIR: I have submitted to the King the letter which you did me the honor to write to me on the 15th of last month, in answer to my note of the 31st of the month preceding; I have since recounted to His Majesty the conference which I had with you upon the object of that correspondence. His Majesty being informed, sir, of the impossibility of your entering upon an explanation of the difficulty which exists in America, relative to the execution of the 8th article of the Treaty of 30th April, 1803: and judging that the settlement of that difficulty cannot be separated from the negotiation of an arrangement of the respective navigation of the two states, considering that the article above mentioned secures special advantages to the French flag, in the ports of Louisiana, is resolved to send, with the greatest possible promptitude, to America, his minister, to be near the Federal Government. He has thought, and his opinion in that has been in accordance with your own, that it was a means of accelerating the negotiation—a thing the more desirable, because the present state can only, by being prolonged, be injurious to the well known interests of both countries.

I regret, sir, that this circumstance deprives me of the advantage of pursuing, directly, with you, an affair of that importance in which I am happy to believe, that your superior information, and your spirit of conciliation, would have afforded all desirable facilities.

Accept the assurances of the high consideration with which I have the honor to be,

Sir, your most humble and most obed't servant,

PASQUIER.

No. 9.—b.

Mr. Gallatin to Mr. Pasquier.

PARIS, 15th September, 1820.

SIR: I had the honor to receive your Excellency's letter of the 13th inst. by which you inform me that, since I am without instructions respecting the 8th article of the treaty of the 30th of April, 1803, it has been determined that His Majesty's Minister to the United States should depart as soon as possible for America.

Although I believe that a transfer of the negotiation to America, may, under existing circumstances, accelerate a definitive result, your Excellency will be pleased to recollect that, so far from having in any manner countenanced an expectation that the Government of the United States would accede to the construction put by that of France, on the 8th article of the Louisiana treaty, I have expressed a contrary opinion.

I have not been led to that conclusion, merely because I consider that construction as altogether untenable. Your Excellency has informed me that the subject had already been discussed, in writing, at Washington, between His Majesty's Minister and the Secretary of State of the United States, who had argued against the construction contended for in France.

Notwithstanding this discussion, the Secretary of State has not even alluded to that subject in the instructions which he has subsequently given to me in relation to an arrangement of the commercial relations of the two countries, and to an adjustment of the difficulties which have arisen in that respect. I am thence irresistibly led to infer, that, after a thorough investigation, the view taken of the article by the Government of the United States, essentially differs from that in which it is considered by His Majesty's Government.

These observations were necessary, on account of my own responsibility; but I pray your Excellency to ascribe them principally to my earnest desire that the negotiation in which I have not been fortunate enough to succeed, may, at Washington, be attended with a favorable result.

I request your Excellency to accept, &c.

ALBERT GALLATIN.

 No. 10.

Extract of a letter, No. 163, from Mr. Gallatin to Mr. Adams, dated 19th October, 1820.

“From conversations with him (Mr. de Neuville) and with the Duke of Richelieu, I am induced to believe that this Government refused to

separate in the negotiation, the question relative to the Louisiana treaty from that of discriminating duties, less with a view to insist on their construction of the treaty than from the hope that the United States would make concessions in some other respect, in order to obtain from France a relinquishment of her pretensions under the article in question."

No. 11.

Extract of a letter, No. 164, from Mr. Gallatin to Mr. Adams, dated 23d October, 1820.

"I had the honor, on the 20th instant, to receive your despatch No. 24, and addressed, on the 22d, to Mr. Pasquier, the letter of which a copy is enclosed. Its object, Mr Hyde de Neuville not having then left Paris, was to induce this government to give him rational instructions. I had the same evening a short conversation with Mr. Pasquier, in which he used conciliatory language, but said that it appeared absolutely necessary to have some explanation on the 8th article of the Louisiana treaty, and drew a distinction between our old discriminating and our new tonnage duty, with reference to the privileges granted to France by that article. I have thought, upon reflection, that there might have been some foundation for that distinction, so far at least as our new tonnage duty exceeded that which it was intended to countervail. But the objection was not at all made on the receipt of the act of Congress; it was thought more eligible to retaliate than to discuss; and France, after having laid her one hundred francs duty, has at least now no right to complain.

Mr. de Neuville called on me since the receipt of your despatch. Nothing very interesting occurred in the course of the conversation. I discovered, however, that, when he had spoken of the privileges granted to France by the Louisiana treaty as being inconsistent with the Constitution of the United States, he alluded to an argument which you had used. I cannot help thinking that there has been in that respect some misconception on his part. It is very clear that the United States could not make, now that Louisiana is a state, a treaty containing conditions similar to those in question; but I do not perceive that the constitution prevented them from acquiring on those terms Louisiana, when a foreign colony; still less that they could, without a compensation, be relieved from any obligation, on the ground that the constitution did not permit its performance. In your despatch to me you consider as contrary to our constitution those privileges only claimed by France, which are founded on an inadmissible construction of the treaty. And the only argument, which, it seems to me, can be drawn from the constitution, is, that the article must remain as it is, and that the Government of the United States cannot, even if so disposed, give to it a more extensive construction in favor of France than its literal and natural sense will admit."

No. 11.—a.

Mr. Gallatin to Baron Pasquier.

PARIS, 22d October, 1820.

SIR: I had the honor, in my letter of the 15th of September last, to state to your Excellency the reasons which induced me to believe that the view taken by my Government, of the 8th article of the Louisiana treaty, essentially differed from that in which it seems to have been considered by His Majesty's Government. A despatch lately received from the Department of State at Washington, leaves no doubt on that point.

The Secretary of State alludes in it to the correspondence between him and Mr. Hyde de Neuville—not for the purpose of giving me any instruction in that respect: for he does not seem to have presumed that this subject would be blended with that of the discriminating duties, or be discussed here—but in reference to a protest intended to be made by His Majesty's consul at New Orleans, against the execution of the act of Congress, of the 15th of May last. And he informs me, in the most explicit terms, that the construction put on the article in question by Mr. Hyde de Neuville, is considered as inadmissible by the Government of the United States.

I have thought it my duty to make this communication to your Excellency, because it thence appears extremely improbable, that those difficulties which have produced a state of things so injurious to the commercial relations of the two countries, can be adjusted at Washington, if his majesty's government shall insist on not separating that subject from the discussion of the article in question, and shall adhere to that construction of the article which had heretofore been contended for.

I request your Excellency to accept, &c.

ALBERT GALLATIN.

No. 12.

Extract of a letter, No. 172, from Mr. Gallatin to Mr. Adams, dated

FEBRUARY 1st, 1821.

“You will have seen by my despatch, No. 164, that I had an opportunity, before Mr. de Neuville's final departure, to make use of your letters relating to the 8th article of the Louisiana treaty, and that this Government ought not to entertain any expectation of obtaining any concessions on our part in that respect.”

No. 13.

Extract of a letter from Baron de Neuville to Mr. Adams, dated February 23d, 1821.

“As I am solicitous to accelerate as much as possible the progress of the negotiation, I now take the liberty of requesting an answer to the letter which I had the honor of addressing to your Department on the 16th of June, 1818, relative to the eighth article of the Louisiana treaty. Should the Federal Government admit the interpretation given to this article on the part of France, it would be unnecessary to discuss the subject any further; but if, after a thorough investigation, it should still adhere to a contrary opinion, you will think with me, sir, that it is material to both parties, to know *how far* they disagree on this very important article of the treaty. Both Governments having the same honest intentions, every point in dispute ought to be easily and speedily settled. What I ask, sir, even in its most limited sense, is the right secured to France by the eighth article of the Louisiana treaty, and in what cases is our navigation to obtain its enjoyment. It would appear to me that the negotiators on either part, had but one and the same object, in inserting the 7th and 8th articles, which express intention was to secure forever to French vessels in the ports of the ceded territory, a real advantage over those of all other nations, and in my opinion, the very expressions of the article, establish in the most positive terms that intention of the negotiators.”

No. 14.

Extract of a letter, No. 174, from Mr. Gallatin, to Mr. Adams, dated 29th March, 1821.

“In a conversation with one of the ministers, whom I have reason to believe to be desirous that an arrangement should take place, he suggested a prolongation for a limited time of the privileges which had, by the Louisiana treaty, been secured during twelve years to the French commerce in that quarter, as a substitute to the provision which allows permanent advantages to it, and as a mode of conciliating the difference of opinion of the two governments on that subject. Another person of great respectability, and very friendly to the United States, alluded to the necessity of some concession on our part, which might enable this government to come to an arrangement without abandoning altogether the ground they had taken.”

No. 15.

Mr. Adams to Baron Hyde de Neuville.

DEPARTMENT OF STATE,

Washington, March 29, 1821.

SIR: By the 7th article of the treaty of 30th April, 1803, by which Louisiana was ceded to the United States, certain special privileges within the ports of the ceded territory were stipulated in favor of the ships of France and Spain, for the term of twelve years; and by the eighth article of the same treaty, it is further provided, that "in future and forever after the expiration of the twelve years, *the ships of France shall be treated upon the footing of the most favored nations in the ports above mentioned.*"

In your note of the 15th of December, 1817, you demanded, upon the allegation of this article, that the advantages conceded to the English nation, *in all the ports of the Union*, should be secured to France in those of Louisiana. The citation of the words of the article would of itself be an answer to the claim. The stipulation of the 8th article is in its terms limited to grants of favors *in the ports of Louisiana*. The seventh article had secured to French and Spanish vessels *in those ports*, peculiar privileges, to the exclusion of the vessels of other nations; and the object of the eighth article was evidently to provide, that, after the expiration of those twelve years, no such peculiar privileges should be granted *in the same ports*, to the vessels of any other nation, to the exclusion of those of France. The whole scope of both the articles, is, by their letter and spirit, limited to special favors, and privileges granted in those particular ports.

The claim of France, therefore, is not, and cannot be, by any construction of the eighth article, to enjoy in the ports of Louisiana, the advantages conceded to any other nation *in all the ports of the Union*, but only that the *ships of France* should be entitled to the special advantages conceded to the ships of other nations in the ports of Louisiana.

Were it then even true, that the English or any other nation enjoyed, by virtue of general stipulations of treaties, advantages in all the ports of this Union, over other nations; inasmuch as they would not be favors specially limited to the ports of Louisiana, or granted with any special reference to them, they could neither by the letter nor the spirit of the Louisiana treaty, give to France any just claim to the special participation, in those particular ports, of advantages there enjoyed only by general arrangements, co-extensive with the whole Union.

But, in the answer from this Department, of the 23d December, 1817, to the note of Mr. de Neuville, of the 15th of that month, it was averred, and it is now repeated, that the ships of France are, and, since the expiration of the twelve years, stipulated by the seventh article of

the treaty, uniformly have been, treated upon the same footing of the most favored nation in the ports of Louisiana. That they will continue to be so, France may be assured, not only from that sacred regard for the obligation of treaties, which is the undeviating principle of the American Government: but from a maxim founded in that justice, which is at once the highest glory and the soundest policy of nations, that every favor granted to one, ought equally to be extended to all.

It is no exception, but an exemplification of this principle, that the vessels of England, Prussia, the Netherlands, and the Hanseatic cities, pay in the ports of this Union, including those of Louisiana, no other or higher duties than the vessels of the United States. This is not a *favor*, but a *bargain*. It was offered to all nations, by an act of Congress, of 3d March, 1815. Its only condition was *reciprocity*. It was always, and yet is, in the power of France, to secure this advantage to her vessels. It always depended upon her will alone, to abolish every discriminating duty, operating against her ships in the United States. Great Britain, Prussia, the Netherlands, the Hanseatic cities, accepted the proffer, and granted the equivalent. Had France seen fit also to accept it, the American Government would have hailed the acceptance, not as a favor, but as equal justice. They were far from anticipating that, instead of this, France would found, upon equal reciprocity offered to all mankind, a claim to special privileges never granted to any. Special, indeed, would be the favor, which should yield to a claim of free gift to one, of that which has been sold at a fair price to another.

English vessels, therefore, enjoy in the ports of Louisiana, no *favours*, which are not equally enjoyed by the vessels of France; nor do they enjoy any reduction of duties, which French vessels might not, at the option of their own Government, have enjoyed at any time since the 3d of March, 1815. That France did not think proper to accept the offer, is not mentioned with a view to reproach. France consulted what she thought to be her own interest, and, instead of reciprocity, aggravated discriminating duties to prohibition. She exercised her rights. But if, in levying those prohibitory duties, there was *disfavor* to the United States, surely, as little can it be alleged, that the extension of reciprocal advantages to all, is a grant to any one of a *favor*.

It is observed in the reply of Mr. de Neuville, dated the 18th of June, 1818, to the letter from this Department, of the 23d of December preceding, that France, by claiming *forever*, in the ports of Louisiana, the full enjoyment of every advantage enjoyed by any other nation, in all the ports of the Union, as the price of equivalent advantages secured to the United States, still claims nothing gratuitous, inasmuch as the equivalent for this special advantage to France, was already paid in the cession of Louisiana itself. This idea is not only contradicted by the whole tenor of the Louisiana Treaty, and by the special and obvious purport of the seventh and eighth articles, but I hesitate not to aver, that, if the American Government had believed

those articles to be susceptible of such a construction, and had those articles *alone* been presented to them as the *whole* price of the cession of Louisiana, they never would have accepted it upon such terms. For such terms would not only have destroyed the effect of the cession of the province in *full sovereignty*; they would not only have been in direct violation of the constitution of the United States; but they would have been a surrender of one of the highest attributes of the sovereignty of this whole nation. They would have disabled this nation forever, from contracting with any power on earth but France, for any advantage in navigation, however great, and however amply compensated. It would have been little short of a stipulation never to conclude a commercial treaty with any other nation than France. For what else are commercial treaties, than the mutual concession of advantages for equivalents? And if every advantage obtained from others for equivalents, were, by a retrospective obligation of this article, to be secured, as already paid for by France, they would have been secured to her not only in the ports of Louisiana, but in those of the whole Union. Such a treaty, far from being an acquisition of the full sovereignty of Louisiana, would have been, on the part of the United States, a formal abdication of their own.

From the obvious purport of the seventh and eighth articles, it is apparent, that neither of them was considered, in any respect, as forming a part of the equivalent for the cession of Louisiana. The cession of Louisiana, and the equivalents paid for it, were not even included in the same treaty. The cession was in one treaty, and the equivalents in two separate conventions of the same date. The seventh and eighth articles referred to, are in the treaty of cession, and not in the conventions of equivalents. The three instruments are, indeed, explicitly declared to be parts of one and the same transaction; but the very form of the arrangements adopted by the parties, shows their common intention to regulate the cession by one compact, and the equivalents given for it by others.

Nor is the proof, that these articles formed no part, in the estimation of either of the parties, of the equivalents for the cession, confined to this tacit evidence in the forms of the negotiation. The seventh article bears upon its face the avowal of the motives by which it was dictated. Its introductory words are, "as it is reciprocally advantageous to the commerce of France and the United States, to encourage the communication of both nations for a limited time, in the country ceded by the present treaty, until general arrangements relative to the commerce of both nations may be agreed on." This is the motive specially assigned by the article itself, for its subsequent stipulations. The reciprocal advantage to the commerce of France and the United States was the end; the encouragement of their communications *for a limited time* in the country ceded, were the means. And the eighth article, following as a corollary from the seventh, merely stipulated that, after the twelve years of special and exclusive privilege, the ships of France should be treated upon the footing of the most favored nations. In neither of the articles can a single

word be found, importing that they were understood by either party as forming any portion of the equivalent for the cession.

In the note of Mr. Hyde de Neuville of the 16th of June, 1818, this claim of France to enjoy for nothing and forever, in the ports of Louisiana, every advantage which the United States may concede for a full equivalent to any other nation, in all the ports of the Union, is supported by a supposed peculiarity in the phraseology of the article, by virtue of which it is claimed. To support this pretension, it is asserted, that, "in *all* the treaties between France and the United States, the condition of reciprocity is mentioned in the most formal manner: that they *all expressly* say, that the two contracting parties shall reciprocally enjoy the favor granted to another nation, *gratuitously* if the concession is gratuitous, or *by granting the same compensation* if the concession is conditional."

The mutual stipulations of being treated as the most favored nation, is *not*, in all the treaties between France and the United States, accompanied by the *express* declaration that the favor granted to a third party shall be extended to France or the United States gratuitously, if the grant is gratuitous, and upon granting the same compensation if it be conditional. This explanatory clause is expressed, in terms, only in one treaty between the United States and France, and that was the first treaty ever contracted between them; namely, the treaty of amity and commerce, of 6th February, 1778, in its second article. It has never been repeated in any of the subsequent treaties between the parties. It was alluded to, adopted, and applied to consular pre-eminences, powers, authority, and privileges, by the 15th article of the consular convention of the 14th November, 1788. But in vain will any such clause be sought for in the convention of 30th September, 1800; the words of the sixth article of which, are as follows: "Commerce between the parties shall be free. The vessels of the two nations, and their privateers, as well as their prizes, shall be treated, in their respective ports, as those of the nation the most favored, and, in general, the two parties shall enjoy, in the ports of each other, in regard to commerce and navigation, the privileges of the most favored nation." There is not a word in this article, nor in the whole convention, saying that these favors shall be enjoyed freely, if freely granted to others, or upon granting the same condition, if conditionally granted; yet who can doubt that this was implied in the article, though not expressed?

The fact, then, in regard to this argument, being directly the reverse of the statement in the note of Mr. de Neuville, of 16th June, 1818, it cannot escape his attention how forcibly the argument recoils upon itself. If from the uniform use of the explanatory clause, in *all* the preceding treaties, stated in the note as a fact, its omission in the Louisiana treaty could have warranted the inference that no such qualification was intended by it, with much stronger reason may it be concluded, that, as the parties had before repeatedly contracted the same engagement, at one time with, and at another without, the explanatory clause, but always intending the same thing, this variety

in the modes of expression, was considered by them as altogether immaterial, and that, whether expressed or not, no claim to a favor enjoyed by others, could justly be advanced by virtue of any such stipulation, without granting the same equivalent with which the advantage had been purchased.

There is therefore no necessity for supposing any forgetfulness on the part of the negotiators of the treaty of cession, nor of recurring to any supposed distinction between the construction applicable to a convention of commerce and to a treaty of sale. It has been proved, that neither the seventh or eighth article was ever understood by either party, as forming any part of the equivalent for the cession; that the reciprocity of the 7th article, is expressed upon its face; and that the eighth, as a consequence from it, only stipulated that after the period of special privilege in those special ports should have expired, no such privilege, in those particular ports, should be granted to other nations, without being made common to the vessels of France. If it be admitted, that, in a contract of sale, nothing can be understood by implication (*sous entendu*;) this principle could be no less fatal to the claim of France, than every other admissible rule of reason: for what implication could be more violent and unnatural than that, by a stipulation to treat the ships of France on the footing of those of the most favored nation in the ports of *Louisiana*, the United States had disabled themselves, forever, from purchasing a commercial advantage from any other nation, without granting it gratuitously to France?

That the Senate, in 1803, did not, formally, object to the stipulations of these 7th and 8th articles, must be ascribed to its never having entered into the imagination or conception of that body, that such a claim as that now attempted to be raised from it by France, was either expressed in, or to be implied from, them. Whether the special privileges, granted for twelve years to the ships of France and Spain, in those ports, were compatible with the Constitution of the United States, or with the other article of the Treaty, by which the inhabitants of the ceded territory were to be incorporated into the Union, and admitted, according to the principles of that Constitution, to the enjoyment of all the rights, advantages and immunities, of citizens of the United States, might be, and was, a question to the Senate in deliberating upon the Treaty. It was a question of construction upon a clause of the Constitution; and that construction prevailed, with which the terms of the Treaty were reconcilable to it, and to themselves. But whether the claim now advanced by France, is reconcilable with the Constitution of the United States, is no question of construction, or of implication. It is directly repugnant to the express provision, that the regulations of commerce and revenue, in the ports of all the *States* of the Union, shall be the same.

The admission of the state of *Louisiana*, in the year 1812, on an equal footing with the original states, in all respects whatsoever, does not impair the force of this reasoning. Although the admission of French and Spanish vessels into their ports, for a short remnant of

time, upon different regulations of commerce and revenue, from those prescribed in the ports of all the other states in the Union, gave them a preference not sanctioned by the Constitution, and upon which the other states might, had they thought fit, have delayed the act of admission until the expiration of the twelve years; yet, as this was a condition, of which the other states might waive the benefit, for the sake of admitting Louisiana sooner even than rigorous obligation would have required, to the full enjoyment of all the rights of American citizens, this consent of the only interested party to anticipate the maturity of the adopted child of the Union, can be considered in no other light than a friendly grant, in advance, of that which, in the lapse of three short years, might have been claimed as of undeniable right.

The Government of the United States have fulfilled, and will fulfil, the eighth article of the Louisiana treaty, according to its plain and obvious meaning. The ships of France are and will be treated, in the ports of Louisiana, on the footing of the most favored nation. The ships of no nation enjoy any special favor in the ports of Louisiana. The ships of all nations are, in the ports of Louisiana, on the same footing, as in the ports of all the other states in the Union. The ships of all nations, in all the ports of the Union, enjoy the same advantages, which the nations to which they belong, concede to the vessels of the United States in return. The favor, and the only favor they enjoy, is reciprocity. That favor, the American Government extend to French vessels, and ask no better of France than to accept. But the American Government cannot grant, as a gratuitous favor to France, that which they have conceded for a valuable consideration to others. No such stipulation is *expressed* in the Louisiana treaty: no such stipulation can, from all or any of its articles be justly inferred. In this, as in all their commercial relations with France, their most fondly cherished hope is mutual friendship, their most earnest desire equal *reciprocity*.

I pray you, sir, to accept the assurance of my distinguished consideration.

JOHN QUINCY ADAMS.

No. 16.

Baron de Neuville to Mr. Adams.

[TRANSLATION.]

MARCH 30th, 1821.

SIR: I have received your letter, dated yesterday, in answer to mine of June 16th, 1818, and 23d ultimo. I shall have the honor to

reply, and believe it will not be difficult for me to shew that all my citations are correct. Not only all the Treaties between France and this country, (those, it is well understood, which could admit of such a clause,) but *even all* the Treaties and Conventions between the United States and European Governments, or *nearly all*, express in positive or in equivalent terms, what I have stated.

I will add, that the force of my argument would not be impaired, even admitting the sense attributed by you to the paragraph which seems to have more particularly fixed your attention. I shall return in a future note to this point of the discussion, as well as to all the others, and shall draw my best arguments from the very acts of the Federal Government, and from the opinions of the most enlightened men in the country. A better source could not be resorted to.

Allow me, Sir, in the mean time, to make an observation, suggested by the following passage of your letter: "The Government of the United States have fulfilled, and will fulfil, the 8th article of the Louisiana Treaty, according to its plain meaning. The ships of France *are*, and will be, treated in the ports of Louisiana on the footing of the most favored nation." You had stated in your note of December, 1817: "It is true, that the terms of the 8th article are positive and unconditional; but it will be readily perceived, that the condition, though not expressed in the article, is inherent in the advantage claimed under it. If British vessels enjoyed in the ports of Louisiana any gratuitous favor, undoubtedly French vessels would, by the terms of the article, be entitled to the same."

In your letter of yesterday, you say that "from a maxim founded in that justice which is at once the highest glory and the soundest policy of nations, that every favor granted to one, ought equally to be extended to all."

"It is no exception, but an exemplification of this principle. that the vessels of England, Prussia, the Netherlands, and the Hanseatic Towns, pay in the ports of this Union, including those of Louisiana, no other or higher duties, than the vessels of the United States. This is not a favor, but a bargain." I cannot, I must confess, view those matters in the same light, nor especially can admit your conclusion. But even admitting that, in reality, the four instances abovementioned are mere excepted cases; allowing that England, Prussia, the Netherlands, and the Hanseatic Towns, enjoy no gratuitous privilege or right in the United States; that they are not favored nations, and that, as you assert, Sir, *This is not a favor, but a bargain*: Admitting even your doctrine, that gratuitous concessions alone constitute what is called *favor*, whereby a nation becomes, in the ports of another, either a favored nation, or the most favored nation: Allowing all this, still, how would it be possible to reconcile the interpretation which the difference between the duties now paid in the ports of Louisiana by French vessels, and those paid in the same ports by the vessels of such nations as have neither *Convention* nor *Treaty*, nor have made any bargain with this Republic?

I am not apprized that Russians, Spaniards, Portuguese, or other nations, having none but such like relations with this country, have been made to pay a duty of eighteen dollars per ton in the ports of Louisiana; and yet this duty is frequently required of the vessels of that nation, which, by virtue of an authentic instrument, and of a positive contract, is entitled *to be treated in future and for ever in the said ports* upon the footing of the most favored nation. Although nothing can be more clear, or better established, than the right of France; "This is not a favor, but a bargain." It was not without motive that the Chargé d'Affaires of his Majesty took care to observe, in his letter of the 18th of July last, that this was not the case of a favor refused, but that of a charge imposed, by one party on the other.

Such a state of things, whatever may be the interpretation given to the 8th article, is so injurious to the rights of France, and so very contrary to the equity and honesty of the Federal Government, that I cannot but flatter myself that the answer now solicited to this letter, and to that of Mr. Roth, of the 18th of July, will be such as to give full satisfaction on this point. And if France should not be made to enjoy immediately the right which I claim, most assuredly she cannot be denied, in the mean time, the enjoyment of that which is acknowledged.

I have the honor to be, Sir, &c.

G. HYDE DE NEUVILLE.

No. 17.

Baron de Neuville to Mr. Adams, dated

MAY 15, 1821.

SIR: I have now the honor to answer your letter of the 29th of March last.

The terms of the eighth article of the Louisiana treaty are as follow: "In future, and for ever, after the expiration of the twelve years, the ships of France shall be treated upon the footing of the most favored nations, in the ports above mentioned;" meaning the ports of the territory ceded by France, Louisiana. It evidently results from the terms of this article, that the French nation is to be treated, *in future, and forever after*, upon the footing of the most favored nations, not in all the ports of the United States, but in those of Louisiana.

But, what is meant—what can be understood by the terms, *being treated upon the footing of the most favored nations?*

Is there but one way of obtaining the right to be so treated? Or, may it be held by more than one title? Upon consulting the various treaties made between different nations, and particularly those which the United States have entered into with European powers, I find in

almost all of them, a definition of what is meant by being *treated upon the footing of the most favored nations*, and these definitions are so precise, that I do not see how any controversy can arise on that point. In most cases relating to the rights and privileges of the most favored nations, the parties even go on to explain, that the favor shall be free, if freely granted to another nation; or upon granting the same compensation if the concession be conditional: from which I conclude, that the right to be treated upon the footing of the most favored nations, may be enjoyed in two ways, either *gratuitously* or *conditionally*.

You, moreover, appear to me, sir, to admit this very material point: you even declare, (and in this opinion I may readily acquiesce, I have at least no interest in opposing it,) that it is not necessary that the terms *gratuitously* or *conditionally*, be expressed in the agreement; meaning, I suppose, where the condition of reciprocity is stipulated. Alluding to the convention of the 30th of September, 1800. you say:—“There is not a word in the whole convention saying, that these favors shall be enjoyed freely if freely granted, or upon granting the same condition if conditionally granted. Yet who can doubt that this was implied in the article, though not expressed?” The article does, in my opinion, contain what I attributed to it, if not in express, at least in equivalent terms; but let us examine what you have stated in your answer. In the article, it is expressly said, *that the two parties shall reciprocally enjoy, each in the ports of the other, as far as regards commerce and navigation, the privileges of the most favored nations*. It goes no further; it gives an explanation as to gratuitous or conditional favors, and perhaps it was unnecessary here. Yet, do you add, who can doubt *that this was implied in the article, though not expressed?* This admission determines the first point, viz: that there are two modes of being treated upon the footing of the most favored nations; and that the rights resulting therefrom may be enjoyed either *freely*, if freely granted, or *conditionally*, if granted upon condition to other nations.

We shall soon have to examine whether France has or has not, from the very nature of the contract of 1803, a right to be treated *in the ports of Louisiana, upon the footing of the most favored nations, unconditionally, and without further compensation on her part*. This second question is of no less importance; but I think it right to detach it from that which now engages my attention, and the solution of which must precede all further discussion. Permit me, sir, here to suggest an observation which has struck me as being very forcible. If France, by virtue of the treaty of 1803, which secured her the rights and privileges of the most favored nations, has had a right to *enjoy every favor freely, if freely granted to other nations, or upon granting the same condition, if conditionally granted*, upon what principle, after the treaty of 1803, which secures the same treatment in a still more solemn manner, should she be reduced to the enjoyment of only such favors as are granted freely to other nations? “If British vessels enjoyed in the ports of Louisiana any gratuitous favor, undoubtedly, French vessels would, by the terms of the article, be en-

titled to the same." It appears to me, that, after your explanation just above cited, it would be equally allowable to say, "If British vessels enjoyed, in the ports of Louisiana, any conditional favor, undoubtedly French vessels would, by the terms of the article, be entitled to the same."

Thus, sir, I hope you will admit, with me, the first question to be sufficiently settled. France is to enjoy, *in future, and forever, in the ports of the territory ceded by her, the privileges of the most favored nations*; and, as the treatment or favor which a nation may receive, is either free or conditional, it follows, that France has a right to be treated in Louisiana upon the footing of the most favored nation, either freely or conditionally, unless it be proved that her contract is to form an exception; that she has already *paid for the privilege which she claims*, and has, therefore, a right to be treated, *without further compensation*, upon the footing of the most favored nation. This, sir, is what I think I can easily prove.

In the mean time, it is evident not only that French vessels do not enjoy in the ports of Louisiana the privileges reserved by France, but that they are even deprived of those which cannot be disputed.

I have already shown that, far from being treated upon the footing of the most favored nations, France at this time, is of all nations that which is most unfavorably treated in Louisiana; which forms a striking contrast with the precise stipulations of the 8th article of the Louisiana Treaty.

But what nations are, (compatively with France) treated upon the most favoured footing, in the ports of Louisiana? All those, I answer, which enjoy in the said ports, whether freely or conditionally, by virtue of treaties or without stipulation to that effect, any rights, favors, or privileges, denied to France. Hence, as it so happens, at this time, that the vessels of four different nations pay in the ports of Louisiana no other or higher duties than those paid by American vessels, I have surely a right to claim the same advantage for our navigation, by virtue of the 8th article of the Louisiana Treaty.

You will observe, sir, that I do not speak of *all the ports of the United States*. Finding this last phrase repeated several times, and underlined in your letter of the 29th, I have some fear not to have been rightly understood, or rather not to have used expressions sufficiently distinct. France has nothing to ask, she claims nothing, *in all the ports of the United States*. She has not to examine whether any or several nations indiscriminately enjoy in these, any rights or privileges, nor on what conditions such rights or privileges may have been granted. But, as the ports of Louisiana are of the number of *all the ports of the United States*, and as France has a right to be treated in those upon the footing of the most favored nations, she claims that right as soon as it is found that the vessels of any other nation are treated there more favorably than hers. But I find, sir, in your letter:—"were it even true, that the English or any other nation enjoyed, by virtue of general stipulations of treaties, advantages in all the ports of this Union, over other nations; inasmuch as they would not be favors spe-

cially limited to the ports of Louisiana, or granted with any special reference to them, they could, neither by the letter nor the spirit of the Louisiana Treaty, give to France any just claim to the special participation, in those particular ports, of advantages there enjoyed only by general arrangements, co-extensive with the whole Union." It seems to me that it would have been useless and even perfectly idle, to make any *special mention* of the ports of Louisiana in the treaties and conventions by which certain rights, favors, or privileges are granted in all the ports of the United States, since they are comprised within the denomination of the ports of the United States. Giving the whole is giving every component part: and in such cases, the general term necessarily embraces every particular denomination. Let us suppose a case. You make over to me conditionally the privilege of hunting on one of your estates, situated in a certain district; I am to enjoy this privilege if you grant it to others. Soon after, you sell or make over to one of my neighbors, the privilege of hunting on all your estates you hold in the same district. It is clear that my right does not, on that account, extend to all your estates, but it certainly does not include that which is specified in my contract or conveyance. The favor is *general* for my neighbors, but as it regards me, is only *special*; for the general term, I repeat it, necessarily embraces every particular denomination. Such matters it is not thought necessary to explain, because it is not expected that they can ever be subject to discussion. But, suppose further, that the right which I so justly claim, was not even granted by you; that I held it only in my own right; suppose it to be an express *reservation* which I had thought it proper to make on disposing in your favor of that estate, which I had consented to sell merely to oblige you and to suit your convenience; if I yielded to your instant and pressing solicitations, if, in order to persuade me to sell this estate, you had gone so far as to offer me, not a mere conditional right of *chance*, but that *privilege, free from all charges or conditions, to enjoy it with you, to the same extent as yourself, and forever*: If I can prove this last assertion by your own documents, you will surely admit, Sir, that this is an indisputable, sacred right, rather in the nature of property vested in me than a mere privilege over yours. *This is not a favor but a bargain.*

What may now appear a mere assertion, shall hereafter be proved. "You do me the honor to state" "The stipulation of the eighth article is in its terms limited to grants of favors *in the ports of Louisiana*. The 7th article has secured to French and Spanish vessels, *in those ports*, peculiar privileges, to the exclusion of the vessels of other nations; and the object of the eighth article was evidently to provide that, after the expiration of those twelve years, no such peculiar privileges should be granted, *in the same ports*, to the vessels of any other nation to the exclusion of those of France; the whole scope of both articles is by their letter and spirit limited to special favors and privileges granted in those particular ports." I must confess, sir, that, so often as I have read the eighth article, I cannot discover that it *evidently* states that, after the expiration of those twelve years, no such peculiar privileges

should be granted, *in the same ports* to the vessels of any other nation, to the exclusion of those of France. The article states—nothing can be more clear, *in future and forever, after* the expiration of the twelve years, the ships of France shall be treated upon the footing of the most favored nations in the ports above mentioned. Nothing whatever is said about *peculiar favors granted in the same ports to the vessels of any other nation*; why then should we attribute to the article what it does not contain? I will add, what it could not express. And this I shall now proceed to prove. When France disposed of Louisiana, she certainly was entitled to reserve any rights whatever in that province, whether *special, gratuitous, limited, or unconditional*; she sold her own property, and had a right to fix its price, as the other party was free to accept or to decline the offer. The express reservation made by her in the first place, for twelve years, and then, on condition of certain events, *forever after*, was no more than a part of the price of the territory ceded; and by no means a favor granted by one party and received by the other.

“This stipulation was a part of the price of the territory; it was a condition which the party ceding had a right to require, and to which we had a right to assent; the right to acquire involved the right to give the equivalent demanded.” I shall have occasion to revert to this opinion of one of the most distinguished men of the country, and which is so much in point. But to proceed with my argument: it is easy to conceive that France was entitled, when disposing of her property, to reserve such rights as she pleased, *with or without reciprocity, for a limited time or forever*; “this was a part of the price of the territory;” but, if as you observe, sir, *there is an express provision in the constitution that the regulations of commerce and revenue in the ports of all the states of the Union shall be the same*, it evidently follows that no nation can acquire by treaty or commercial convention, in the ports of Louisiana alone, the advantage which France enjoys there by special title, by virtue of a bargain and sale; which instrument is singular, from its very nature, and cannot be repeated in favor of any nation, whatever may be its connexion or commercial interests with the United States; at least so far as respects the territory ceded by France. If, therefore, no other nation can acquire in the ports of *Louisiana alone*, whether *gratuitously or conditionally*, the special favor, or to speak more correctly, the right which France has thought proper to reserve in those ports “*in future and forever after*,” surely I am authorized to maintain not only that the 8th article *does not*, but even that it *could not*, admit of the meaning which is attributed to it. Can it be supposed that the American negotiators had proposed to France to reserve an advantage or privilege which, according to the Federal Constitution, could never be realized? To give such an interpretation to this article would not be doing justice to their honesty; it surely must have some other meaning; why not then adopt that which is most natural. * *We do not presume, says Vattel, that sensible persons had nothing in view in treating together, or in*

* Vattel, B. II. Ch. XVII, § 283.

forming any other serious agreement. The interpretation which renders a treaty null and without effect cannot then be admitted.

“Every clause should be interpreted in such a manner, as that it may have *its effect*, and not be found vain and illusive.”* Let us then leave to the eighth article its true sense; its expressions are clear and distinct; and it is admitted that, *in the interpretation of treaties, pacts, and promises, we ought not to deviate from the common use of the language;*† we also know that the first general maxim is, that *it is not allowable to interpret what has no need of interpretation;*‡ and you allow, Sir, in your letter of the 23d of December, 1817, that *the terms of the 8th article are positive and unconditional.* It being admitted that the terms are positive and unconditional, and since, *in order to ascertain the true sense of a contract, attention ought to be paid, principally to the words of him who promises; and since, on every occasion, when a person has, and ought to have shewn his intention, we take for true against him, what he has sufficiently declared,*§ what motive can there be, for denying France a right established in positive and unconditional terms, more especially when the intention of the American negotiators, of those who promised, is sufficiently declared and perfectly manifest? On this subject, it will soon be shown that the 8th article, which, in itself, is so precise as to require no corroboration, has, withal, by way of corollary, a document calculated to remove every possible doubt, if any could still remain. But, sir, you seem to think that the 7th and 8th articles have never been, (in any respect) considered “*as forming part of the equivalents for the cession of Louisiana, and that the cession was in one treaty, and the equivalents in two separate conventions of the same date;*” and finally, while admitting that the three instruments form but one whole, as it is expressly declared, you add, “*but the very form of the arrangements adopted by the parties, shews their common intention to regulate the cession by one compact, and the equivalents given for it by others.*” If we are ever to deal in conjectures, why should we not say, for there would seem to be more ground for the assertion, that the 7th and 8th articles of the convention are the *equivalents*, and the two subsequent instruments merely accessory, and the *compliment* of the bargain? We shall soon find, that it is quite allowable to consider, as a mere *accessary*, what you, sir, regard not only as the principal part, but even as *the whole of the compensation.* But let us set every commentary aside, the convention of 1803 cannot give rise to any mistake. The 7th and 8th articles established, without the least ambiguity, the nature and conditions of the rights reserved by France: the 9th article coming next, because what is most important should be settled before points of minor consequence, sufficiently shews that the two supplementary instruments are only matters of execution. They, in fact, contain calculations of banking and exchange; and details of liquidation which could not well have been comprised in the convention; and it is even, moreover, fully explained, that those two instruments signed on the same

*Vattell. B. II. ch. xvii. §283

§Idem, id. id. 267.

†Idem, id. id. 272.

‡Idem, id. id. 265.

§Idem, id. id. 263.

day, "are to have their execution in the same manner as if they had been inserted in the principal treaty, that they be ratified in the same form, and in the same time and jointly."

The question, it appears to me, may be viewed in two different lights, and will still, in either case, equally resolve itself in favor of the claims of France. In the first place, France may be considered as having reserved certain rights of property, on disposing of her sovereignty in Louisiana: and this would appear the more correct view of the case: for, strictly speaking, the 7th and 8th articles are not the equivalents of the cession according to the true sense of the treaty, as understood in 1803. In the other supposition, considering the 7th and 8th articles as part of the equivalents, the rights and privileges therein secured to France will form, with the fifteen millions dollars, the full and entire compensation for the territory ceded by her. The privileges secured by the 7th and 8th articles are still, in either case, a right of property, of the most sacred nature.

"This is not a favor, but a bargain. This is not a free gift, but the fair price of that which has been sold." But suffer me, sir, to observe, that it is entirely erroneous to suppose that *neither the seventh nor eighth article was ever understood as forming a part of the equivalent for the cession:*" Not only it was understood they did, and was so meant by the negotiators, but one of them, Mr. Livingston, while offering to the French Government the express reservation of the rights and privileges in question, as I shall hereafter prove, went so far as to say that, *by those means, France would enjoy all the advantages of the colony, without incurring the expense of maintaining it.* Let us now add to Mr. Livingston's expressions, the formal opinion of Mr. Randolph, and it will be no longer possible to maintain that *neither the 7th nor 8th article was ever considered as forming part of the equivalent for the territory ceded by France.* "I regard this stipulation only as a part of the price of the territory; it was a condition which the party ceding had a right to require, and to which we had a right to assent. The right to acquire involved the right to give the equivalent demanded."⁽¹⁾ In your letter of the 29th of March last, as well as in your note of the 23d of December, 1817, you advance that, if France could claim *forever* in the ports of Louisiana, a privilege which could be denied to her in other ports of the United States, France would, in such case, have transferred only an *imperfect sovereignty* to this republic. I have already endeavored to establish, (letter of June 16th, 1818,) that *sovereignty* should ever be distinguished from *property*; in support of which, I could cite many instances of transfers of a *full and entire sovereignty*, with the reservation of certain rights or privileges, in the nature of that which France holds in the ports of Louisiana. But the very terms of the article make it perfectly useless to discuss this point. The expression *forever* is sufficiently explicit. *In the ports of the territory ceded,* surely implies that France is entitled to the privilege claimed by her in Louisiana only, and it may therefore, at all times, be denied her

(1) Congress, House of Representatives. Mr. Randolph's debate of the Louisiana treaty, Tuesday, October 25, 1803.

in the other ports of the United States, unless some other treaty or convention should intervene. You persist, also, in believing that the right claimed by France, is in contradiction with the constitution of the United States, which declares that "all duties, imposts, and excises, shall be uniform throughout the United States, and that no preference shall be given by any regulation of commerce or revenue to the ports of one state over those of another." I could add several very plausible arguments to those which I have already made against that supposed inconsistency; I might, perhaps, also, contend, with some advantage, against the manner in which you explain the admission of the state of Louisiana on an equal footing with the original states, in all respects whatever, in spite of the privilege which France and Spain still enjoyed in its ports. I think I should have some right to observe, that, in all constitutional questions, no modification is admissible, and nothing is to be assumed except according to the forms required by the constitution itself; that representative Governments scarcely admit of acts of mere courtesy; that they have the law alone in view; and that it is, therefore, to be presumed, that Congress would not have emancipated, before its maturity, the adopted child of the Union, nor have given him a preference not sanctioned by the constitution, (1) if, in fact, the measure could have been considered as illegal. But, sir, my Government has nothing to do with the question of constitutionality; it is, therefore, proper for me to decline discussing it, and I shall be satisfied with recalling some very respectable opinions which militate in favor of my positions, or against what is objected to them, and destroy all idea of inconsistency between the 7th and 8th articles of the Louisiana treaty and the Federal Constitution.

(2) Mr. Rodney—It is contended that the United States have no right to purchase territory: that they have no right to admit the people of Louisiana to a participation of the rights derived from an admission into the Union; and that a peculiar favor is about being granted to the ports of New Orleans, in violation of the Constitution. In the view of the Constitution, the Union was composed of two corporate bodies, of states and territories; a recurrence to the Constitution, will shew that it is predicated on the principles of the United States, acquiring territory either by war, treaty, or purchase. There was one part of that instrument within whose capacious grasp, all these modes of acquisition were embraced. By the Constitution, Congress have power to lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defence, and general welfare of the United States. To provide for the general welfare; the import of these terms is very comprehensive indeed. If this general delegation of authority be not at variance with other particular powers specially granted, nor restricted by them, if it be not in any degree comprehended in those subsequently delegated, I cannot, said Mr. Rodney, perceive why, within the fair meaning of this general provision, is not included the power of increasing our territory, if necessary, for the general welfare or common defence. Suppose, for instance,

(1) It cannot, most assuredly be correct to violate the principles of the Constitution for a day.—Mr. Griswold, House of Representatives, debate 25 8ber, 1803.

(2) Debate, 25 8ber 1803, House of Representatives.

that Great Britain should propose to cede to us, the Island of New Providence, so long the seat of pirates preying upon our commerce, and the hive from which they have swarmed—will any gentlemen say that we ought not to embrace the opportunity presented, as a defence against further depredations? Suppose the Cape of Good Hope, where our East Indiamen so generally stop, were offered to be ceded to us by the nation to which it belongs, and that nation should say, on our possessing it, you shall declare it a *free port*. Is there any member who hears me, that would contend that we were not authorized to receive it, notwithstanding the great advantages it would ensure to us."

"There is another sound answer to the objection of gentlemen: *this is properly ceded to us by the power ceding it with a particular reservation.*"

(1) Mr. Smilie.—"If the prevailing opinion shall be that the inhabitants of the ceded Territory, cannot be admitted under the constitution, as it now stands the people of the United States can, if they see fit, apply a remedy by amending the constitution, so as to authorize the admission."

(2) Mr. Crowninshield.—"It surely cannot be unconstitutional, to receive the ships of *France* or *Spain*, in the ports of the new territory, upon any terms whatever. *It is a mere condition of the purchase*, and this House may or may not agree to it. Being a mere commercial regulation, we have the power to give our assent or dissent to the article in question; for I hold it to be correct doctrine, that this House, by the constitution, have the power to regulate commerce with foreign nations, as well as with the Indian Tribes, and that, whenever the President and Senate make a treaty, involving any commercial points, our consent is absolutely necessary to carry the treaty into effect. By giving our assent, we do not injure the right of the other ports in the Atlantic states, as the privilege is extended only to ports in the ceded territory. I consider the eastern or carrying states, as particularly and deeply interested in the acquisition of Louisiana; it is true, their ships already visit almost every part, but under many restrictions, and I wish to see them sailing on the Mississippi, without molestation or restraint."

"I am in favor of adopting these treaties, and they shall have my hearty support."

(3) Mr. Randolph.—"The unconstitutionality of this treaty, is attempted to be shown by the following quotation from that instrument: No preference shall be given to the ports of one state over those of another state, &c. &c. New Orleans, therefore, will enjoy an exemption. She is therefore a favored port, in contradiction to the express letter of the Constitution. To me, it appears that this argument has much more of ingenuity than of force in it; more of subtlety than of substance. Let us suppose that the treaty, instead of admitting French and Spanish vessels, on the terms proposed, merely covenanted to admit American vessels on equal terms, with those of France and Spain. If we acquired this

(1) Debate on the Louisiana treaty, Tuesday, 8ber 25th, 1803.

(2) Debate on the Louisiana treaty, Tuesday, 8ber 25th, 1803.

(3) Debate on the Louisiana treaty, Tuesday, 8ber 25th, 1803.

right, divested of the country, it would have been considered and justly, as an important privilege. Annex the territory to it, and you cannot accept it! You may, indeed, acquire either the commercial privilege or the territory, without violating the Constitution, but take them both, and that instrument is infringed!

"I regard this stipulation only as a part of the price of the territory. It was a condition which the party ceding had a right to require, and to which we had a right to assent. The right to acquire, involved the right to give the equivalent demanded. Mr. Randolph said, that he expected to hear it said in the course of the debate, that the treaty in question might clash with the treaty of London, in this particular: he would, therefore, take this opportunity in remarking, that the privilege granted to French and Spanish bottoms, being *a part of the consideration for which we had obtained the country*, and the Court of London being officially apprized of the transaction, and acquiescing in the arrangement, it would ill become any member of that House to bring forward such an objection."

(1) Mr. Adams.—"But it has been argued that the bill ought not to pass, because the bill itself is an unconstitutional, or, to use the words of the gentleman from Connecticut, an extra constitutional act. It is, therefore, say they, a nullity. We cannot fulfil our part of its conditions, and on our failure in the performance of any one stipulation, France may consider herself as absolved from the obligations of the whole treaty on hers; I do not conceive it necessary to enter into the merits of the treaty, at this time. The proper occasion for that discussion is past; but, allowing even that this is a case for which the Constitution has not provided, it does not, in my mind, follow, that the treaty is a nullity or that its obligations either on us, or on France, must necessarily be cancelled. France never can have the right to come and say, I am discharged from the obligations of this treaty, because your President and Senate, in ratifying it, exceeded their powers; for this would be interfering in the internal arrangements of our Government. It would be intermeddling in questions with which she has no concern, and which must be settled entirely by ourselves. The only question for France, is, whether she has contracted with the Department of our Government authorized to make treaties; and, this being clear, her only right is to require that the conditions stipulated in our name, be punctually performed; I trust they will be so performed, and will cheerfully lend my hand to every act necessary for the purpose; *for I consider the object as of the highest advantage to us.*"

The opinions I have just cited, have so much weight, that I shall not attempt to support them by further authority, and shall consider it as sufficiently established:

1st. That the rights reserved by France are, in fact, properly vested in her; or, in other words, that the territory of Louisiana is *a property ceded with particular reservation.*

2dly. That if, in 1803, the Louisiana treaty was deemed *unconstitutional*, by some of the distinguished characters of the United States, the great majority of Congress declared itself in favor of a contrary doctrine.

(1) Senate debate, Nov. 3d, 1803.

3dly. That the question of *constitutionality* is, and should be, foreign to France, and that her only right is, to require that the conditions stipulated be *punctually* and *faithfully* performed.

The French Government desires no more; and has, therefore, I think, a right to expect, that a claim so well founded will cease to be disputed.

I read in your letter, "Nor is the proof, that these articles formed no part, in the estimation of either of the parties, of the equivalents for the cession, confined to this tacit evidence in the forms of the negotiation. The seventh article bears upon its face the avowal of the motives by which it was dictated. Its introductory words are: '*As it is reciprocally advantageous to the commerce of France and the United States, to encourage the communication of both nations, for a limited time, in the country ceded,*' &c. &c. &c. The reciprocal advantages to the commerce of France and the United States was the end; the encouragement of their communications *for a limited time* in the country ceded, were the means; and the eighth article, following as a corollary from the seventh," &c. &c. &c.

I think I have already sufficiently shewn, that the two parties in the contract had but one and the same mode of understanding the 7th and 8th articles; but, even if I had not, in support of my opinion, those already cited, and that of Mr. Livingston, which I shall soon have occasion to produce, still would my position be incontrovertibly proved by the very terms of those articles.

You cite, sir, the introductory expressions of the seventh article. Allow me to invite you to examine its conclusion, which appears to me more explicit, and leaves no doubt as to the true intention of the negotiators.

But perhaps it would be still better to cite the whole article. It speaks for itself, and sufficiently explains what induced the negotiators to fix the duration of the privilege conveyed by the seventh article, and to assign no limitation to the right of property secured by the eighth.

"As it is reciprocally advantageous to the commerce of France and the United States to encourage the communication of both nations, for a limited time, in the country ceded by the present treaty, until general arrangements relative to the commerce of both nations may be agreed on; it has been agreed between the contracting parties, that the French ships, coming directly from France, or any of her colonies, loaded only with the produce or manufactures of France, or her said colonies; and the ships of Spain, coming directly from Spain, or any of her colonies, loaded only with the produce or manufactures of Spain, or her colonies, shall be admitted, during the space of twelve years, in the ports of New Orleans, and in all other legal ports of entry within the ceded territory, in the same manner as the ships of the United States coming directly from France or Spain, or any of their colonies, without being subject to any other or greater duty on merchandise, or other or greater tonnage, than those paid by the citizens of the United States. During the space of time above mentioned, no other nation shall have a right to the same privileges in the ports of the ceded territory. The twelve years shall commence

three months after the exchange of ratifications, if it shall take place in France, or three months after it shall have been notified at Paris to the French Government, if it shall take place in the United States. It is, however, well understood, that the object of the above article is, to favor the manufactures, commerce, freight, and navigation, of France and if Spain, so far as relates to the importations that the French and Spanish shall make into the said ports of the United States, without in any sort affecting the regulations that the United States may make concerning the exportation of the produce and merchandise of the United States, or any right they may have to make such regulations."

What appears most clearly deducible from the terms of this article is, that it was thought advantageous to the commerce of France and of the United States to encourage, in a *very special manner*, the communications of the two nations in the ports of the territory ceded; that the principal object was to favor the manufactures, the commerce, and the shipping, of France and Spain. I can see no other advantage resulting from the 7th article for the United States, and it must be admitted that its stipulations are, in fact, advantageous only to France and to Spain. No reciprocity is granted to the United States, either in the ports of France or in those of Spain. Their communication with France will, it is true, be more frequent, but *only in the ports of the ceded territory*. Perhaps the article might have been worded with more care, but, after all, it expresses no more than I have stated. If the avowed object of the article was to favor, in a *special manner*, not only the commerce and navigation of France, but likewise the commerce and navigation of Spain, *without any reciprocal stipulation* for the United States, it is easy to discern what induced the American negotiators to demand that the privilege which France *was not alone* to enjoy in Louisiana *should be limited in its duration*; more especially as, during that time, *no other nation* could be admitted to enjoy the same favor. But where the privilege ceased to be common to Spain, the French Government, while consenting to modify it as by the eighth article stipulated for the *perpetual* and unconditional enjoyment of the right of property thus reserved, the eighth article does not, as did the 7th, stipulate that other nations shall not be treated as favorably as those of France in the ports of the territory ceded by her; such a condition could be imposed but for a limited time. But it was natural that, when yielding to the solicitations of the American negotiators, the French Government consented to cede Louisiana, it should secure to France the right *never* to be treated more unfavorably than any other nation in the ports of her former colony, whether those favors be purchased or not by such nations; that the transaction which, on the part of France, was at once a great sacrifice and a striking proof of her friendship for these United States, should not, in the end, turn to her detriment, but should, at least, secure some lasting advantage to her commerce and navigation. All this is not mere conjecture of my own; the facts are positive and clear; and every doubt must cease after attending to the following sentiments, not of the French negotiators, but of Mr. *Livingston* himself, in the memorial addressed by him to the French

Government on this question, Is it advantageous for France to take possession of Louisiana? He does not confine himself to proposing that France should reserve, *forever, and without reciprocity for the United States*, the right stipulated in the eighth article, but even that which she subsequently held by the 7th article for twelve years only. "Does France wish," says Mr. Livingston, "to introduce more easily her productions into the western country; does she desire to accustom its inhabitants to her wines and manufactures, and to conquer the prejudices which the Americans entertain in favor of English goods, &c. &c. &c. *All this can be accomplished only* by the cession of New Orleans to the United States, with the reserve of the right of entry, at all times, for the ships and merchandises of France, free from all other duties than those paid by American vessels. By those means, American merchants established in New Orleans will be interested in her trade; their capital, instead of being sent to England, will go to France. *who will thus enjoy all the advantages of the colony, without incurring the expense requisite to support it*, and the money which America, by her industry, has drawn from Spain, will be restored to France, which England, not enjoying the same advantages, and *paying higher duties*, could not furnish them at the same price." This passage of the memorial of the minister from the United States, is sufficiently clear, and we shall see that he, furthermore, takes care to corroborate its evident intention. Let us continue to follow the course of his argument. "The possession of Louisiana," does he say, "is very important for France, if she draws from it the only advantage which sound policy would seem to indicate. I speak of Louisiana only, not including Florida, because I do not consider it as forming part of the territory ceded, as she may, by means of the cession, have a free trade on the Mississippi, if she knows how to avail herself of the circumstance by an understanding with the United States. She will find a market for a great variety of goods when she shall have accustomed the inhabitants of the western country to prefer them to English goods, which she can only accomplish by giving them at a lower price, and this she can obtain only by giving American merchants an interest in selling them, in employing there their capital, and by inducing the American Government to give them the preference. All this can only be accomplished by the cession of New Orleans to the United States, reserving the right of entry, at all times, free from all other duties than those paid by American vessels, together with the free navigation of the Mississippi. This will give her vessels *the advantage over those of all other nations*, and will not only retain, but increase the capital of the city of New Orleans, and hence, provisions for the islands will be purchased there at a lower rate, and French manufactures will be more easily introduced into the western country, which the United States will have no interest in preventing, every cause of rivalry between the two nations being completely removed. Thus will France command respect without inspiring fear to the two nations whose friendship is most important to her commerce, and to the preservation of her colonies; and all these advantages will be secured without incurring the expense of establishments which ruin the public treasure, and divert its capital from

its true object." What! Mr. Livingston, in order to induce France to cede the territory of Louisiana, offers her *more!* from benevolent motives, established in the very treaty itself, she subsequently consents to accept or to reserve *less*, and even this shall be contested! The article which secures this to her shall be said to have no meaning, and be supposed to have expressed a mere impossibility! I will here dwell upon an idea tending to explain how such doubts could have arisen. Mr. Livingston's memorial must have been lost sight of. I shall now proceed to discuss, as briefly as possible, the error which you think you have discovered in the citation of my note of June 16th, 1818. On this subject, I have already observed, in my letter of the 30th March last, that even if such an error had been committed, the strength of my argument would not thereby have been impaired. But let us examine, if, in fact, there be any such mistake; there are but eight treaties or contracts between France and the United States; *four of these* are of such a nature as not to admit of the clause in question; *in two others* it is *formally* expressed; in another it is mentioned in equivalent terms; the last, which is the *Louisiana* treaty, is alone *silent* in that respect; and this silence furnishes, of itself, an irresistible argument: I was, therefore, right, in saying that all the treaties which could admit of that clause, mention, *expressly*, the condition of reciprocity. It is of no consequence that one of them should not positively use the words, *freely if freely granted, or upon granting the same condition if conditionally granted*. These words are a mere accessory, irrelevant to the question, in the examination of which you have alleged my quotation to be erroneous. This question I shall now establish in its simplest form, and shall give it some extension so as better to explain my opinion. I say that in all the treaties of the United States, not only with France, but with the other European nations, when mention is made therein of being treated upon the footing of the most favored nations, this condition of reciprocity is expressed, stipulating that the contracting parties shall enjoy the same privileges and advantages each in the ports of the other. One instrument alone is drawn in very different terms; it states, *in future and forever after, the French nation shall be treated upon the footing of the most favored nations, in the ports of the territory ceded by her*. The clause stops here; what are we to conclude, that, in fact, there was nothing omitted, nothing implied, by the negotiators. (*sous entendu*) reciprocity was not due; and, therefore, no mention is made of it. It was not due, because the convention of 1803 had no analogy with mere commercial treaties or regulations; it was a sale, a bargain; the seventh and eighth articles are reservations of rights of property made by the vendor; *a mere condition of the purchase*. (Mr. Crowninshield;) *a part of the price of the territory*, (Mr. Randolph;) finally, because the territory of Louisiana is a property ceded *with a particular reservation*. (Mr. Rodney.) Were it even a commercial treaty, still, since the condition of reciprocity is not mentioned, France would have a right to maintain that she owes it not, and she could allege in her favor a very respectable opi-

nion, in the following words of Mr. Madison, (Speech on the British Treaty.) “The fifteenth article has another extraordinary feature, which, I should imagine, must strike every observer. In other treaties, which profess to put the parties on the footing of the most favored nations, it is stipulated that, where new favors are granted to a particular nation in return for favors received, the party claiming the new favor shall pay the price of it. This is just and proper where the footing of the most favored nation, is established at all. But this article gives to Great Britain the full benefit of all privileges that may be granted to any other nation, without requiring from her the same or equivalent privileges with those granted by such nation; hence it would happen, that if Spain, Portugal, or France, should open their colonial ports to the United States, in consideration of certain privileges in our trade, the same privileges would result *gratis* and *ipso facto* to Great Britain.”

But we have not even to examine this question, that which occupies our attention, is quite different, since it relates to a *sale*, a *bargain*; not a *favor but a bargain*.

I think, Sir, I have sufficiently proved—

1st. That there are two modes of being treated upon the footing of the most favored nations, either *gratuitously* or *conditionally*.

2dly. That the ships of four nations enjoy, at this time, in the United States, and, of course, in the ports of Louisiana, the rights and privileges of the most favored nations.

3dly. That France, according to the terms of the eighth article of the Louisiana Treaty, has a right to be put in possession of the same privileges in these said ports, being part of those of the United States.

4thly. That she owes, and can owe, no reciprocity, not only because no such condition is stipulated in the contract, but also because the privilege in question, is a right of property reserved, or, if you prefer it so, is one of the equivalents of the bargain.

5thly. That the intention of the negotiators cannot be doubtful, since the article which, in itself, requires no explanation, has, as a corollary, an authentic document, which would irresistibly prove, by the very circumstances of the case, what was meant and intended, if the treaty itself had not expressed it in the most explicit terms.

I therefore hope, Sir, that, after the preceding explanation, the President will be pleased to order that, in future and for ever, (unless in case of subsequent arrangements to the contrary, between France and the United States,) the eighth article of the Louisiana treaty receive its full and entire execution, and that, by consequence, French vessels be immediately made to enjoy, in the ports of the ceded territory, all the rights, advantages, and privileges, granted to Great Britain, and to other nations, by virtue of treaties, or in any other manner.

I have the honor to be, Sir,

Your most humble and obedient servant,

G. HYDE DE NEUVILLE.

NOTE. Is it likely that France can have intended to cede, for the mere consideration of a sum of fifteen millions of dollars, property

which, even before the cession, was considered as having an incalculable value, which a distinguished member of Congress valued (Deb. 25th 8ber, 1803,) at more than fifty millions, and which, in a well written article of the *National Intelligencer*, of the 10th of 8ber, 1803, was esteemed to be worth six hundred millions of dollars? And it must not be said that France was ignorant of its value, since, before the cession, the American public prints took continual pains to inform her of it. I shall here cite one of these articles, signed Columbus, (*Nat. Intell.* 2d Sept. 1803.) The writer complains that several of the public prints strive to take from the merit of Mr. Livingston's memorial: he expresses a fear that they should persuade France that it is contrary to her interests to cede Louisiana to this Republic. He cites the following passage of a paper published in Fredericktown, which would go to prove to the French Minister in Washington, that the First Consul would commit an act of great folly in consenting to abandon so vast a territory.

"The democrats cannot think the First Consul, Bonaparte, such a simpleton as to part with that country for any compensation we can make him." Thus, adds Columbus, it is represented that nothing, in our command, is enough for those objects, (Louisiana and New Orleans.)

Most certainly Bonaparte will never be regarded as a simpleton; nor will it be alleged that he had such affection for the inhabitants of these United States as to have had, in the cession of Louisiana, no other object but that of rendering them a service. Surely he must, at the same time, have thought of his own country, and have intended, by reserving certain rights and privileges in favor of France, to secure, at least, a sort of compensation for the great sacrifice to which he was subjecting her.

In whatever light this subject is viewed, the cession of Louisiana must certainly be considered as one of the most inconsiderate and fatal measures of the Usurper; but still it is not allowable to suppose that he could, on this occasion, have entirely lost sight of the interests of France, and have consented to give up, for the mere consideration of fifteen millions of dollars, an immense territory, which will be a never-failing source of riches and prosperity to these United States, and which, to *France*, would have been worth all the colonies which she now possesses, or has possessed, in the two hemispheres.

The following opinion is such authority that I cannot better conclude than with citing it.

I consider the object as of the highest advantage to us; and the gentleman from Kentucky himself, who has displayed, with so much eloquence, the immense importance to this Union of the possession of the ceded country, cannot carry his ideas further, on that subject, than I do.—*Sen. deb.* 3. 9ber. 1803.

Mr. Adams to Baron Hyde de Neuville.

DEPARTMENT OF STATE,

Washington, 15th June, 1821.

SIR: In replying to the two letters which I have had the honor of receiving from you, the one bearing date the 29th of March last, and the other the 15th of May, I find it necessary to re-state, in its simplest terms, the question in discussion between us.

The seventh and eighth articles of the treaty by which Louisiana was ceded to the United States, contain two distinct, but obviously connected stipulations; that of the seventh article, by which certain special privileges in the ports of the ceded territory are secured, for the term of twelve years, to the vessels of France and Spain, *to the exclusion of the vessels of all other nations*; and that of the eighth article, that, after the expiration of this special privilege, thus limited to the ports of the ceded territory, French vessels should be forever, in the ports of the ceded territory, on the footing of the most *favoured nation in the same ports*.

Upon the terms of this article, by your note of the 15th of December, 1817, you demanded, in the name and by order of your government, and as in fulfilment of this article, that all the advantages yielded *for ample equivalent* to British vessels, *in all the ports of this Union*, should be yielded, *without any equivalent*, to French vessels, in the ports of Louisiana.

The answer which immediately presented itself, on the first disclosure of this demand, was, that the claim was, in two important particulars, broader than the stipulation upon which it was raised; first, inasmuch as, upon the mere right to *equal favor*, it required gratuitously, that which was conceded to another for a just equivalent; and, secondly, inasmuch as, upon a stipulation limited in all its parts to *the ports of Louisiana*, it required concessions yielded to others *in all the ports of the Union*.

As the claim was thus without support from the *letter* of the article, it was also apparently contradictory to its spirit and motives, as well as to the whole purpose of the treaty, and expressly incompatible with other articles of the treaty, and with the Constitution of the United States. Such was the substance of the answer, which, on the 23d of December, 1817; I had the honor of addressing to you in reference to this claim.

By your note of 16th June, 1818, you replied with the allegation, that France was entitled, by this article, to enjoy, *unconditionally*, in the ports of Louisiana, any advantage granted *upon conditions* to others in all the ports of the Union, because France was to be considered as having already given the equivalent by the cession of the territory; and, especially, because you alleged, that, in *all the other treaties* between France and the United States, it was expressly said, that the two contracting parties should enjoy, reciprocally, any favor granted to others *gratuitously*, if the concession to others should be gratuitous, or, by granting the same compensation if the concession should be conditional; and, as no such distinction between

conditional and gratuitous favor was formally expressed in the 8th article of the Louisiana cession treaty, you insisted with great earnestness, that this variation in the phraseology of the article from that which had been universally used in all the preceding treaties between the parties, led, irresistibly, to the conclusion, that no such distinction was intended; but that the United States were bound forever to give to the vessels of France in Louisiana, every advantage, which, to the end of time, they might *sell for a price* to the vessels of other nations throughout the Union.

The great stress with which your note of 16th June, 1818, dwelt upon this supposed departure from the universal language of the prior treaties, made it necessary to observe, that its only basis was an error in point of fact; that no such concurrence in the form of language used in relation to the same principle, existed in the prior treaties; that the alternative reciprocity of *conditional* or *gratuitous* favor, far from being expressed in all the treaties between the parties, had in terms been expressed only in *one*, and that, the first treaty ever made between them; and particularly that a treaty concluded with the same government, as the Louisiana cession, and only three years before, contained such an article, stipulating, mutually, the advantages of *the most favored nation*, without any notice whatsoever of distinction between favors *gratuitous* and favors *conditional*; and that this variation of the phraseology in the prior treaties, of stipulations obviously intending the same thing, not only swept away the argument which you had drawn from the supposed universal coincidence of the former treaties, but made it recoil upon itself, and proved that gratuitous or the conditional nature of *equal favor* was inherent in the terms themselves, and had only been expressly developed in the treaty of the 6th February, 1778, from the abundant caution of contracting parties, new to each other, and above all anxious to leave no possible question of their meaning, thereafter to arise.

Your reply of 30th March last, to my note of the preceding day, insists that "all your citations, in your preceding letters, had been perfectly exact; that not only *all* the treaties between France and this Republic, (meaning the conventions which could be judged susceptible of the clause in question,) but, also, all, or nearly all, the treaties or conventions between the United States and European Governments, say, in terms formal, or *equivalent*, what you had understood, what you had read, what you had been bound to say."

Permit me to observe, that the simple question between us was, whether *all* the treaties between the United States and France, excepting only the Louisiana treaty, in stipulating the advantages of *the most favored nation*, had *expressly* added that the favor should be free, if freely granted to others, and upon the same condition, if conditionally granted. Your letter of the 16th June, 1818, in the most unqualified terms asserted that they had; and from this position, connected with the omission of the same explanatory clause, in the stipulation of the Louisiana treaty, you had deduced, and most earnestly pressed an argument, that this supposed solitary change in the redaction, necessarily imported a different construction, and entitled France

to enjoy, in the ports of Louisiana, *unconditionally*, every favor granted to others, whether with condition or without.

The demand upon a stipulation of *equal favor*, to enjoy without equivalent, or condition, that which was conceded to others only for an equivalent, or upon condition, was, in itself, so extraordinary, that it assuredly required something stronger than inferences, and implications, and equivalent terms, for its support. The main argument upon which Mr. de Neuville's letter of 16th June, 1818, had relied for this unexampled claim, was the omission in the Louisiana cession treaty, of the *express* explanatory words alleged to be *in all the others*. But the fact being otherwise, the conclusion was more clearly the reverse.

It may now be added, that the only possible sense in which a stipulation for equal favor *can* be carried into effect, is by granting it freely, or for the equivalent, according as it is granted to others. For if the same advantage should be granted to *France*, *without return*, which is conceded to others only for the return, who does not see that France, instead of being upon equal footing with the most favored nation, would herself be upon a footing *more* favored than any other?

In the latter part of your letter of the 30th March, without abandoning this demand of *exclusive* favor, built upon a simple engagement of equal favor, you seem to admit that the diminution of duties conceded to the vessels of several nations in the ports of this Union, is not a favor, but a bargain; and you alleged that, even upon this principle, French vessels should be exempted from the additional tonnage duty of the act of 15th May, 1820, in the ports of Louisiana, because the vessels of Russia, Spain, Portugal, and other nations with whom the United States have no treaty, are not subject to it; and, repeating a remark which had been made by the Chargé d'Affairs of France, in August last, you say this is not merely a favor refused, but a burden imposed.

The vessels of nations with whom the United States have no treaties, enjoy *no* favors in the ports of Louisiana. In the ports of Louisiana, the vessels of all nations are on the same footing as in those of all the other ports of the United States: there is no most favored nation in the ports of Louisiana, nor in any other port of the United States. During the twelve years, while the vessels of France and Spain were admitted into the ports of Louisiana alone, upon terms more favorable than into the ports of the United States, and from which the vessels of other nations were excluded, they were the most favored nations in the ports of Louisiana; but the favors were confined both to the vessels of those nations and to the ports of Louisiana. They enjoyed this favor by virtue of the seventh article of the treaty; and the object and purport of the next article was to stipulate that, when this special and limited period of favor should expire, no such special and exclusive favor should be granted to any other nation, in the same ports. Such is the engagement of the United States; and, as such, it has been, and will continue to be, fulfilled. No favor is now granted to any nation in the ports of Louisiana, and the eighth article of the treaty has no more application to the general commer-

cial laws of the United States, operating alike in every part of the Union, than it has to the special bargains by which the vessels of some nations enjoy a reduction from the duties imposed by those general laws, *on the condition* of equivalent advantages to the vessels of the United States, in the countries to which they belong.

To the demand, therefore, that the vessels of France should pay no higher duties in the ports of Louisiana, than the vessels of Russia, Spain, Denmark, or Portugal pay in *all the ports of the Union*, the answer is the same as that given to your demand in terms by your letter of 15th December, 1817, that the vessels of France should pay in the ports of Louisiana, no higher duties than those paid by British vessels in *all the ports of the Union*. The claim is broader than the stipulation upon which it is founded. This stipulation is, both by its letter and spirit, confined to *special favors in special ports*. The claim is either to *general favors*, applied to special ports, or to *unrequited favors* for conditional obligations. In every such case, and by either of the constructions for which you contend, the United States could not assent to your claim without favoring France in the ports of Louisiana *more* than any other nation. Instead of being upon the same footing of the most favored nation, she would herself be the most favored nation, and enjoy advantages conceded to no others. This is not the stipulation of the treaty.

In your letter of the 15th ult. you remark, that the exemption of the vessels of other nations from the extraordinary tonnage duties levied upon those of France, inasmuch as it is enjoyed in all the ports of the Union, is enjoyed also *in the ports of Louisiana*, as a part of the Union; and, being enjoyed there, France has, by the engagement of the treaty, a right to claim the same exemption *in those ports*, although she is not entitled to claim it in the other ports of the Union. But it is this very generality, by virtue of which the vessels of other nations enjoy the exemption, which takes away from it all application of the eighth article of the treaty. Their exemption is not a *favor in the ports of Louisiana*, even when they enjoy the benefit of it in those ports: they enjoy no special favor there; and it is to such special favor only that the stipulation could give France an equal claim.

In your letter of the 15th ult. it is observed that the question is "what must be understood by being treated upon the footing of the most favored nation;" but this is not the question, because it does not cite the whole stipulation; the omission of the words "in the ports abovementioned," changes the state of the question from its special to a general character. The stipulation is, that "the ships of France shall be treated upon the footing of *the most favored nations in the ports abovementioned*." The qualifying and special terms "in the ports abovementioned," apply both to the most favored nations and to the treatment of the ships of France; nor can France claim *any* favor in the ports of Louisiana by this stipulation, without first showing that some other nation enjoys the same favor, as a special favor exclusively in those ports. There is no such favored nation in the ports of Louisiana. In the omission of those words, it is believed that their

great importance to the question in discussion had escaped attention. Their restoration to the statement of the question will immediately show their leading to a different conclusion.

You observe, indeed, in another part of your letter, that you claim this favor in favor of France only *in the ports of Louisiana*; and you express your apprehension that I had misunderstood the purport of the demands in your preceding letters, because I had specially underscored the terms *in all the ports of the Union*, when referring to the duties collected upon the vessels of other nations. I am well aware that you have demanded the special favor for France, only in the ports of Louisiana; but you demand the special favor in the special ports, not as the stipulation of the article would warrant if the case existed, because other nations enjoy the same special favor in the special ports, but because, by general laws, applicable to the vessels of those foreign nations *in all the ports of the Union*, they pay in the ports of Louisiana less for tonnage duty than the vessels of France.

You observe that it would have been superfluous, and even idle, to make *special* mention of the ports of Louisiana in treaties granting certain rights, favors, or privileges, in all the ports of the Union, because, in the ports of the Union, are included those of Louisiana; that to give the whole is to give a part; as in such cases the generality necessarily includes the speciality. This observation, as applicable to treaties between the United States and other nations, is correct; but the inference to be drawn from the principle asserted, is conclusive against the claim of France in the present case. For it is not to any such concession of a general nature, and which is enjoyed by others in the ports of Louisiana, only because they are ports of the Union, that the stipulation of the eighth article of the Louisiana cession treaty applies. That stipulation, both in letter and spirit, is, in all its parts, special and not general. The whole transaction refers specially to Louisiana, as distinct from, and not as a part of, this Union. The seventh article stipulates for special favors in its ports for a term of years, *to the exclusion of other nations*; and the eighth provides against the concession of similar special favors after the expiration of the twelve years, to other nations, to the exclusion of those of France.

It is not, therefore, sufficient for France to say, that the vessels of four other nations pay only one dollar a ton in the ports of Louisiana, while those of France are required to pay eighteen. For those vessels pay that dollar only, not because they are more *favoured* than other nations *in those ports*, but because they pay the same in all the ports of the Union; because those nations have passed no laws excluding the vessels of the United States from carrying to their ports the productions of their own soil by the excessive aggravations of surcharges.

There is no difference of opinion between us with regard to the principles which ought to apply in the construction of compacts, promises, and treaties. Admitting the correctness of all your citations from Vattel, I would specially invite your attention to that which forbids all constructive interpretation of that which speaks for itself. But I ask that, in stating the question upon the stipulation, none of its essential words should be omitted; that it should not be stated as

a general question of "what is meant by being treated on the footing of the most favored nation," but as a special question of what is meant by being treated as *the most favored nation in the ports of Louisiana*; for, when, upon a stipulation in these words you raise a claim to be treated in Louisiana on the footing of *the most favored nations in the ports of the United States*, and when, to support this claim to special favor in special places, resort is had to the argument that the whole includes all its parts, and that the generality embraces the specialty, what is this but interpreting that which has no need of interpretation? To us it appears not only so, but an interpretation as contrary to the manifest intention of the article, inferrible from its connection with the article immediately preceding, as to its letter, which is special in all its parts.

Of the numerous extracts which you have taken the trouble of introducing in your letter of the 15th ult. from the speeches of individual members of Congress, reported in the National Intelligencer, as having been delivered at the debates on the passage of the laws for carrying the Louisiana treaties into execution, I regret not to have been able to discover *one* which has any bearing whatever upon the question between us, which is of the true import of the eighth article of the treaty: they all have reference to the seventh article—to the exclusive privileges which made France and Spain, for a limited term of twelve years, *the most favored nations in the ports abovementioned*; and the objection was strongly urged that this stipulation was incompatible with the provision in the Constitution, which forbids any preference to be given by any regulation of commerce or revenue to the ports of one STATE over those of another. To this objection, the speeches from which you have cited passages, were the answers; and they all distinctly assume the principle, that the prohibitive injunction of the Constitution was not incompatible with the stipulation of the treaty; because Louisiana was acquired, not as a state, but as a territory: so that, while she continued in the territorial or colonial condition, regulations of commerce different from those prescribed for the *states* of the Union, might be established in her ports, without contravening the Constitution; and there was not, in any one of those speeches, the intimation of a doubt, but that, when Louisiana should be admitted as a *state* into the Union, the regulations in her ports must be the same as in the ports of all her sister states. But the third article of the treaty stipulated that "the inhabitants of the ceded territory should be incorporated in the Union of the United States, and admitted *as soon as possible*, according to the principles of the federal Constitution, to the enjoyment of all the rights, advantages, and immunities, of citizens of the United States;" and, as this article could be carried into execution only by their admission into the Union as a state or states, so by their admission in that capacity, their ports became subject to that provision of the Constitution which interdicts all preference to the ports of one state over those of another. If the admission of a part of those inhabitants did, in fact, by a short time, precede the termination of the period

subject to the exclusive privileges of French and Spanish vessels in their ports, although the sentiment cited by the Baron de Neuville be perfectly correct that the Constitution ought not to be violated for a single day, as no question appears to have arisen at the time of the admission of the state, upon the application of this article, and as the privilege of French and Spanish vessels was never, in fact, denied them, during the term for which they were entitled by the article to claim it, whatever transient and inadvertent departure, in favor of the inhabitants of Louisiana, from the principle of the Constitution, may have occurred is, as the Baron de Neuville observes, a question of internal administration in this government, from which France has received no wrong, and of which, therefore, she can have no motive to complain.

For the term of twelve years, therefore, from the time specified in the treaty, France and Spain enjoyed, by virtue of the seventh article, special favors and privileges in the ports of Louisiana. But it was not certain, at the time when the treaty was concluded, that the inhabitants could, within twelve, or twenty, or even fifty years, according to the principles of the Federal Constitution, be entitled to claim admission into the Union, as a *State*. After the expiration of the twelve years, there might be an indefinite interval of time, during which the special favors conceded to France and Spain in the seventh article, might be transferred to other nations; and the eighth article was obviously intended to avert that contingency, by stipulating, that, after the twelve years of special favor in the ports of Louisiana, the vessels of France should be on the footing of *the most favored nations in the ports aforementioned*—importing, by the proper meaning of the terms, and without any ambiguous inferences of specialties from generalities, or, as the Baron de Neuville's reasoning would require, of generalities from specialties, that no such special favor in the ports of Louisiana should, after the twelve years, ever be conceded to any other nation, to the exclusion of France. This is the plain and obvious meaning of the article—the only meaning deducible from its letter—the only meaning traceable to the intention of the parties, by its immediate connection with the special and exclusive privilege of the article immediately preceding it, and of which it is the natural complement.

If the opinions cited by the Baron de Neuville from the speeches of individual members of Congress, *after* the conclusion of the treaty, have, as is now maintained, no bearing whatever upon the meaning of the article now in discussion, much less can it be expected, that the proposals in a memoir addressed by Mr. Livingston to the French Government, nine months *before* the negotiation of the treaty, and intended to shew that it was not the interest of France to take possession of Louisiana at all, should have any reference to a treaty founded upon totally different principles.

The object of this memoir was to convince the French Government, that it was for the interest of France, instead of taking possession of Louisiana, to put *the island of New Orleans* into the hands of the United States, reserving to herself the right of a free port there, pay-

ing no higher duties than American vessels, and securing also to France the navigation of the Mississippi. The memoir was written at a time when the project of establishing a military colony at New Orleans was contemplated by France; but even the treaty by which Louisiana was ceded to France by Spain, had not then been concluded. There is an error in the citation from this memoir, in the letter of the Baron de Neuville, (page 32,) of the 15th ult., where it is quoted as saying, that "the *possession* of Louisiana was very important to France," while in the memoir itself the expressions are, that "the *cession* of Louisiana is very important to France."

The substitution of the term *possession* for that of *cession*, is only noticed because it might give an erroneous idea of the whole scope of the memoir, which was to prove that the *possession* of Louisiana by France would be, in a very high degree, detrimental to the interest of France, but that she might render the cession useful to her by putting *New Orleans* in the possession of the United States, securing to herself the privilege in it of a free port, together with the navigation of the Mississippi. The memoir did not even propose that Louisiana should be *ceded* to the United States, but merely that New Orleans should be put into their *possession*, to be held by them, not as an independent and sovereign state of the Union, but on the same Colonial condition as it was then held by Spain, and as it would have been held by France, had she taken and retained possession of the Province. Under such a project, embracing no purpose of a change in the political condition of the inhabitants, the parties were competent to stipulate conditions like these without violating the Constitution of the United States, even though without limitation of time. But the compact actually made was of a totally different character. By the compact actually made, not only the Island of New Orleans, but the whole Province of Louisiana, was *ceded* in full sovereignty to the United States, for a valuable consideration in money; an equivalent far more valuable to France than any benefit she would ever have derived from the possession of the Province for ever. The nature of that compact, however, made it necessary to provide for the future condition of the inhabitants of the country. Justice to them required, that, when thus ceded in full sovereignty to the United States, they should, in due time, be released from all the shackles of colonial bondage, and assume their station as a free and equal portion of the Republic to which they were annexed. With this wise and just condition, France could no longer claim to stipulate for the navigation of the Mississippi; she could no longer ask, without limitation, the privilege for her ships of exclusive favors in the ceded ports. Both these conditions, perfectly compatible with a treaty upon the basis which had been proposed by the memoir of Mr. Livingston, in August, 1802, became quite inadmissible in a treaty founded on the basis finally adopted. The comparison therefore of the *proposals* in the memoir of Mr. Livingston, cited in the letter of the Baron de Neuville, with the actual stipulations in the 3d, 7th, and 8th articles of the treaty, affords itself a very conclusive argument against the present claim of France. The proposals are, that France should merely give *possession* to

the United States of New Orleans, reserving to her own ships, without limitation of time, the privileges of paying there no higher duties than American vessels, and the navigation of the Mississippi: But not a word was said in them of a stipulation that the vessels of France should be upon the footing of the most favored nations in the same ports. The treaty is a cession in full and entire sovereignty of the whole province, but with no right reserved of navigating the Mississippi, and with the right of admission for French and Spanish vessels, upon the same footing as American vessels, limited to twelve years. Why these great and remarkable variations from the offers of the memorial? Why, but because they necessarily flowed from the principle of a cession in full sovereignty, and because all the rights and privileges of the Constitution of the United States were, by a new stipulation, secured to the inhabitants of the Province! The cause and the effect are both palpable, from every point of departure in the actual treaty from the proposals of the memoir. The limitation in the article, of that which the proposal offered unbounded, is the proof of its own necessity; and the substitute in the 8th article, of equal favor *with the most favored in those ports*, after the expiration of the limitation, instead of the perpetuity of the special privilege, is illustrated both in its meaning and extent by the exposition of the unlimited offer in the memorial, of which it supplied the place.

Of the numerous citations, in the letter of the Baron de Neuville, of the opinions of individual members of Congress, and even of anonymous publications in the American newspapers, one purpose appears to be to dwell with great earnestness on the supposed advantages of the Louisiana cession to the United States. Without referring to the estimates of nameless authorities, it is not necessary to inquire whether those of the members referred to were exaggerated or otherwise. It is however to be observed, first, that all those estimates were formed, under impressions that the extent of the Louisiana cession was vastly more comprehensive than the subsequent declarations and efforts of the French Government would have made it; and secondly, that probably all those persons, to whose anticipations the Baron de Neuville appeals with so much confidence, agreed as they were in the importance and value of Louisiana to the United States, would also have agreed in the opinion so forcibly urged in the memoir of Mr. Livingston, that the possession of the same country, would have been worse than useless, highly detrimental, and pernicious to France. Of this opinion, one, at least, of the individuals, whose sentiments the Baron de Neuville has been pleased to quote with very flattering deference, then was and still is. He has no doubt that, in the possession of France, Louisiana would have continued to be, as it always had been, a burden and not a benefit; and at the time when the cession was made, the only practical question to France was, whether Louisiana should pass into the hands of a friend, for ample compensation, or into the grasp of an enemy, for no compensation at all. Louisiana then, was of great value to the United States, and of much less than no value to France; and the cession of it by France to the United States, was one of those trea-

ties which are the best and most useful of transactions between nations, a compact highly advantageous to both the contracting parties.

But whether advantageous or otherwise, and whether to both or to neither of the parties, has no more bearing upon the present question between the two Governments, than the speculative forecast of individual members of Congress, or the lucubrations of newspaper party writers. The question is upon the true meaning of the eighth article of the treaty: that meaning is expressed in the words of the article: it is confirmed to demonstration, by its immediate connection with the preceding article; it is illustrated by its variation from the proposals in Mr. Livingston's memoir, cited by the Baron de Neuville himself; nor has it been possible for the Baron, at any stage of the discussion, to state the present claim of France in any shape, without essentially departing both from the words and from the spirit of the article upon which it would rely. When first advanced, he expressly demanded, upon a promise of *equal favor in the ports of Louisiana with the most favored in the ports of Louisiana*, a performance of equal favor in Louisiana with the most favored in *all the ports of the Union*. Upon a promise of equal favor, he demanded a grant, *without equivalent*, of that which had been conceded to others for an equivalent. In his letters of the 15th of May, he states the question to be, *what is understood by being treated on the footing of the most favored nation?*—omitting the words “in the ports abovementioned,” which words are part of the stipulation in the article; but the very insertion of which, in the statement of the question, would have been fatal to the present claim.

After the fullest consideration of the question in controversy, and the most deliberate examination of the arguments adduced by the Baron de Neuville, in his several letters on this subject, I am instructed to say, that this Government adheres to the opinion, that the eighth article of the Louisiana treaty does, in no respect, authorize the present claim of France, inasmuch as, since the expiration of the twelve years specified in the seventh article, there has been no nation *more favored than another in the ports of Louisiana*.

I avail myself with pleasure of this occasion of renewing to you the assurance of my distinguished consideration.

JOHN QUINCY ADAMS.

No. 19.

Baron de Neuville to the Secretary of State.

[TRANSLATION.]

WASHINGTON, June 30th, 1821.

SIR: I have received the letter which you have done me the honor to write to me, dated the 15th of this month.

In my turn I shall endeavor to re-establish the question which occupies our attention; and, by removing some errors which it behoves

me to rectify, I shall answer the new arguments, which you have opposed to those advanced by me in the commencement of the discussion: from these I cannot depart, since nothing appears to me to weaken their force.

You do me the honor to state that "the 8th article stipulates, that French ships shall be, *forever, in the ports of the ceded territory*, upon the footing of the most favored nation *in the same ports*."

Farther, you add, "the qualifying and special terms in the ports above mentioned, apply both to the most favored nation, and to the treatment of the most favored nations."

Finally, you say, sir, that I have founded on the 8th article, which you cite, my remonstrance of the 15th Dec. 1817, tending "to obtain for French vessels *in the ports of Louisiana*, the advantages granted to the English nation *in all the ports of the Union*."

I founded my demand upon the 8th article, *such as it is in the treaty of cession*.

I will here observe, that, in my opinion, even though the article were expressed as you present it, my cause would still be no less founded; but it is prudent to make no concessions to so formidable an adversary; I shall therefore, attack your principal argument in its basis, and shall endeavour to prove it is erroneous, even in the point whereby you seek to establish that there is no question, but of *special favors* to be granted, specially and *exclusively* in the ports of the territory ceded by France. Allow me, sir, in the first place, to make the following observation: my claim is entirely grounded upon the article, such as it is in the treaty, as it should be understood in the common usage of language; and, in fact, it is always by modifying it, or, to speak with more propriety, by making it anew, that an attempt is made to oppose my arguments.

This eighth article, according to your note of the 29th March, means *evidently*, that, after the expiration of the twelve years, *no such peculiar privileges should be granted, in the same ports, to the vessels of any other nation, to the exclusion of those of France*.

But the article appears to me *evidently* to stipulate quite the reverse. It has no relation to the *special right* which France reserved, by the seventh article, for Spain and for herself, for the space of 12 years, but to all the rights, privileges, immunities, favors, which, after the 12 years, might be granted to other nations under any title whatever.

France is to be treated, *in future and forever, upon the footing of the most favored nation*. This is the whole question; if what you understand to be its import had really been meant, would it not have been more natural to have entirely suppressed the eighth article, and, after the following clause of the seventh, ("during the space of time abovementioned no other nation shall be entitled to the same privileges in the ports of the ceded territory.") to have added, "after the expiration of the twelve years aforesaid, if the same privileges are granted to any other nation in the same ports, they shall become common to France also."

But even these expressions, I perceive it, sir, would not come perfectly up to your idea, nor effectually over-rule my opinion.

Why then was not the article worded in the following terms: they would naturally have occurred to the negotiators if they had thought at that time of what you now conjecture.

“In future, and forever, France shall enjoy, *gratuitously*, in the ports of the territory ceded by her, all the rights or privileges which may be granted *gratuitously*, and specially, in the said ports, to any other nation.” The clause would then have been clear and precise, and I should, in such case, have perfectly conceived what you do me honor to state in your note of the 23d December, 1817: “If British vessels enjoyed, in the ports of Louisiana, any *gratuitous favor*, undoubtedly French vessels would, by the terms of the article, be entitled to the same.”

But, to be candid, how can it be asserted *now* that France is to enjoy only such favors as may be granted *gratuitously* to other nations, when we read in the 8th article, “In future, and forever, after the expiration of the twelve years the ships of France shall be treated upon the footing of the most favored nations in the ports abovementioned?” I, therefore, had reason to advance that it was essentially necessary first to define correctly what must be understood by the terms *most favored nations*. It makes but little difference whether we say the *most favored nation in the ports of Louisiana*, or only the *most favored nation*, since we have only to determine this first point of the difficulty.

Why should France enjoy in the said ports only such favors as should be conceded *gratuitously*, and not such as might be granted conditionally? The 8th article says no such thing; why, therefore—by what law, by what rule, can it be positively established, that, “if British vessels enjoyed in the ports of Louisiana any *gratuitous favor*, undoubtedly French vessels would, by the terms of the article, be entitled to the same.” Is there then but one mode of becoming in any country whatever, the most favored nation? Or, if the conventional law of nations admits, particularly in the United States, that this treatment may be obtained, not only *gratuitously* but *conditionally*; if the Federal Government has been ever careful to have this clause inserted in its different treaties; if I find it in the conventions of 1778, 1783, 1785; if I find it again in the treaty with Prussia, negotiated by Mr. Adams himself, in 1799, how can the Secretary of State say now, that, “if British vessels enjoyed in the ports of Louisiana any *gratuitous favor*, undoubtedly French vessels would, by the terms of the treaty, be entitled to the same?”

France, I repeat it, has a right to enjoy, in the ports of Louisiana, the treatment of the *most favored nation*, whether this nation be favored *gratuitously* or *conditionally*; she has a right to enjoy it, inasmuch as the 8th article stipulates expressly, that, “*in future, and forever, French ships shall be treated upon the footing of the most favored nation in the ports of the territory ceded by France.*” To pretend that she is to obtain this treatment in case only that it shall be conceded

gratuitously to another nation, is subjecting the 8th article to an arbitrary interpretation; it is going in the face of a doctrine generally received; it is interpreting what requires no interpretation; it amounts, in fine, to the creation of a new conventional law of nations peculiar to the ports of Louisiana.

I now pass, sir, to the entirely new interpretation which you give in your letter of the 15th of this month, to this same article. You make it express, that, after the expiration of this special privilege, that, if the seventh article thus limited to the ~~ports~~ of the ceded territory, French vessels should be forever, *in the ports of the ceded territory*, on the footing of the most favored nation in the same ports.

If the question were only to new mould the article, nothing could be more easy, as I have already made it appear, than to give it the sense which is now attempted to be ascribed to it; but we must adhere to its letter if we mean ever to come to an understanding.

It is certain that French vessels are to be treated upon the footing of the most favored nation; but where are they to be so treated? I answer, in the ports of the territory ceded by France; and this *ipso facto, gratis*, whatever be the title under which *the most favored nations* may enjoy the same treatment, has it been meant by the article to say *the nation most favored in the said ports, exclusively in the said said ports*? Finally, are we to read, as you now, for the first time, propose, *the most favored nation in the ports of the ceded territory*? Doubtless, no; the last member of the period has no reference to the *most favored nation*; it can have no relation except to the *treatment of French vessels*: “*In future, and forever, French vessels shall be treated upon the footing of the most favored nation.*” Here the sense is complete, with regard to the words *most favored nation*. All instruments found in public law clearly show what is meant by *the most favored nation*. There can, therefore, be no misconception in this respect. But this is not the case with the other member of the sentence; it is not sufficient to stipulate, that French vessels shall, *in future and forever, be treated upon the footing of the most favored nation*; it is necessary, moreover, to specify *where* they shall be so treated; for, otherwise, the sense would be incomplete, and the article would have no meaning at all.

I shall avoid all grammatical discussion; but, if the sense of the article did not evidently bear me out, and if I were under the necessity of showing by its construction, that it cannot have the meaning which you attribute to it; I could cite in favor of my assertion, several phrases of your last note, and would prove by their correctness, that the 8th article, such as it has been drawn, and worded in the treaty, cannot admit the argument made by you, in the concluding words of the sentence.

It concerns not France to examine if any nation enjoys in the ports of the territory ceded by her, any right or privilege, *as a special favor exclusively in those ports*; she has only to inquire whether any nation is there treated upon the footing of the most favored nation; or, in other words, if the treatment she receives, is more favorable than

that of French vessels, in the said ports. It is matter of small importance to her, to know whether such nation, being the most favored in Louisiana, is at the same time the most favored in Baltimore, New York, or Boston, or to know by what title such favor is granted in the ports of Louisiana. The fact alone, when ascertained, is of itself sufficient ground for claiming as her due, the fulfilment of the 8th article of the Louisiana treaty, which stipulates *that, in future and forever, after the expiration of the 12 years, French vessels shall be treated upon the footing of the most favored nations, in the ports above-mentioned.*

Which, without gloss or comment, expressly means, “In future and forever, after the expiration of the 12 years aforesaid, French vessels shall be treated in the ports abovementioned, (that is, in the ports of Louisiana territory ceded by France,) upon the footing of the most favored nations.”

It would be needless to add any thing to this explanation, since the sense is complete. And it would be vain to seek even in a forced wording (redaction) of the article, the *special favor exclusively* in those ports. The article neither expresses nor could express any such thing. It does not express it, as has been just proved. It could not express it.

This, sir, you would constantly prove, by objecting that, “according to the Constitution, no preference shall be given by any regulations of commerce or revenue, to the ports of one state, over those of another.” From this it clearly follows, in your own opinion, sir, that no nation can receive *a special favor in a special port*, and exclusively in that port. What is not allowable at this time, could not surely be done in 1803; and how can it be conceived, that the only end of the American negotiators was to grant to France, nothing but an illusive advantage, a privilege which she could *never be put into possession of* consistently with the Constitution? How could the French negotiators have claimed or accepted such a favor? How is it possible to reconcile the idea of a claim, which would amount to a mere *mockery*, with expressions so solemn as these, *in future and forever*? It cannot, I repeat it, be presumed, that discreet and sensible men, making a treaty and a solemn conveyance, have intended to make a mere nullity. Let us examine what is likely to have taken place, what certainly did occur during the negotiation, and we shall find that it is not at all necessary to torture the expressions of the article, in order to establish its true and positive meaning.

France was about to cede a vast territory in order to render an important service to a friendly nation; that territory was her property; she, therefore, had a right to settle the clauses and conditions of the contract. This was not the case of a favor granted, nor of a commercial regulation to be made by the United States; but, on the contrary, of a favor to be received, of a very important acquisition to be made by them. This bargain could not but be very advantageous in every respect to the United States—France was not to gain as much by it; this she knew, but although she willingly consented to

make so great a sacrifice, was she entirely to neglect her own interests? The French Government knew at the same time, that difficulties had arisen already between the two countries, and the convention of 1800, testified that the parties had not been able to come to an understanding on the treaties of 1778; the provisional convention of 1800, was to remain in force only five years more; it might possibly be renewed; the parties might come to an understanding on the various points in dispute; but, at the same time, it was also possible that other discussions should produce injurious measures, impolitic steps, and lead to a state of things equally injurious to both nations.

Experience seems to have proved how prudent it was in them, to foresee, and how wise to act in prevention. Such being the state of things, how was it proper for France to act? I will answer, just as she did act, and this course was too obvious not to have been pursued. She was about to cede an immense colony, the inhabitants of which spoke the French language, and were likely not to lose French tastes or to abandon French fashions: it particularly behoved her to secure *forever*, such a market for her productions*—Mr. Livingston told her so, policy and common sense led her to do so. It was, therefore, that the French Government, while ceding Louisiana, in order to give the United States a remarkable proof of friendship, and to do away every cause of rivalry between the two nations, reserved, in the ports of the territory ceded, a right or privilege, the full and entire enjoyment of which, should be independent of all general arrangements of commerce or navigation, existing at that time, or which might subsequently be made by the two nations: that the privilege should secure to French merchants, the advantage of being *forever* treated in Louisiana, upon the footing of the most favored nation, whatever might be the footing upon which they should be received in the other ports of the United States; therefore, did France demand that, after the expiration of the twelve years, during which, both Spain and herself were to enjoy an equal privilege, she, France, should have *alone*, in future, and *forever*, a right to be treated, in the ports of Louisiana, upon the footing of the most favored nation; not of the nation most favored exclusively in the said ports, (which, most assuredly the 8th article does not say,) but of the most favored nation by whatever title; which the article may be said to stipulate expressly, since no condition is annexed to the favor. It cannot, at all events, be asserted that this is a forced interpretation, since it agrees so perfectly with the text and letter of the article, which is, moreover, abundantly explained by antecedent facts, by the circumstances of the case, and by subsequent events. It appeared to me, sir, that, in my letter of the 15th of May, I had clearly replaced upon its proper footing, the question relating to a supposed error in that of the 16th of June, 1818. I thought it was proved that, whether there were or were not such an error in my letter, there would still remain the same force in the argument, which, alone, it was material to attack; but since you have thought it proper,

* See the end of Mr. Livingston's memorial.

sir, again to return to this citation, which, I repeat it, even if erroneous would not alter my argument in the least, let us again examine with minute attention, if there really be any mistake on my part.

There are eight treaties, compacts, or conventions, between France and the United States; four of these are of such a nature as not to admit the clause in question; the four others being such as to allow its insertion, are: The Treaty of Amity and Commerce of September, 1778. The Consular Convention of 9th November, 1778. The Commercial Convention of —, 1800; and last, the Louisiana Treaty of —, 1803. In the treaty of 1778, stipulating that both countries shall enjoy, each in the ports of the other, the treatment of the most favored nation, the very same expression which I have used will be found in the articles 2d, 3d and 4th. The convention of 9th of November, refers to the 2d, 3d, and 4th articles of the said preceding treaty. Two, therefore, out of these four treaties, state precisely what I have attributed to them, viz: that each nation shall enjoy, in the ports of the other, the treatment of the most favored nation, *freely*, if freely granted, or conditionally, if the concession be *conditional*.

The third treaty, (of 1800,) stipulates expressly that the two nations shall reciprocally enjoy the treatment of the most favored nation, both as regards the rights and privileges of Consular agents, (art. 10th.) and with respect to all privileges, immunities, liberties, and exemptions in trade, navigation, and commerce, and as to duties or imposts, of what nature soever they may be, or by what name soever called. An attentive examination of these two articles will surely suffice to produce an absolute conviction, that, when the condition of reciprocity is thus expressed, nations are reciprocally to enjoy the treatment of the most favored nations, upon the condition generally understood. Thus, the convention of 1800 does state, in *equivalent* terms, what is stipulated expressly in the treaties of 1778. I, therefore, concur in your opinion, sir, on one point. In truth, *who can doubt that this was implied in the article?* but I cannot go on to say with you, *though not expressed*, since it does not appear to me possible to express any thing more clearly in equivalent terms. Last remains the Louisiana treaty, and it is precisely because the treatment of the most favored nation is secured to France, *without reciprocity on her part*, that a discussion has arisen on these points. Where, then, have I committed any error? Perhaps it would have been more rigorously exact to have said the *treaties*, instead of *all the treaties*, since the reference was but to four treaties. But I would ask, sir, if that single word, *all*, was of such moment as to fix so repeatedly your attention? Sir, I repeat it, all the treaties between France and the United States, (those, it is understood, which could admit of such a clause,) all the treaties between the United States and European nations, wherein the treatment of the most favored nation is mentioned, stipulate that it shall be *reciprocal*; and on examining the other compacts between nations, I find the same stipulation of reciprocal advantages in every case, except where, as in the Louisiana treaty, there is some charge imposed by one party on the other, or a privilege reserved.

Whence is it that one treaty, that of 1803, should alone mention, *without reciprocity*, the treatment of the most favored nation? The reason becomes obvious, if we consider that it is the only treaty of the United States, *sui generis*, which does not relate to commercial arrangements: a commercial convention grounded on expected contingencies, and stipulating mutual services and advantages, which do not require any advances, has no sort of analogy with a *contract of sale*, a *mere bargain*. In this last case the vendor conveys his property to the vendee, who binds himself for the stipulated consideration, consisting in the other clauses, charges, and conditions, of the bargain, as well as in the funds to be paid at hand, or by instalments; the right of the vendor, *his only right*, as you observed, sir, in 1803, is to require that the conditions stipulated be punctually and faithfully performed. This is all France desires; she has enjoyed, or might have enjoyed, during the space of twelve years, the right secured to her by the 7th article, and she now demands the fulfilment of the 8th article; which, as well as the 7th, is "a part of the price of the territory, a mere condition of the purchase." In your letter of the 15th you say, "of the numerous extracts which you have taken the trouble of introducing in your letter of the 15th ult., from the speeches of individual members of Congress, reported in the *National Intelligencer*, as having been delivered at the debates on the passage of the laws for carrying the Louisiana treaties into execution, I regret not to have been able to discover *one* which has any bearing whatever upon the question between us, which is of the true import of the 8th article of the treaty; they all have reference to the 7th."

Suffer me, sir, to observe, that in thus taking the trouble to cite these very respectable opinions, my principal object was to answer the following passage of your letter of the 15th of March: "From the obvious purport of the 7th and 8th articles, it is apparent, that *neither* of them was considered in any respect as forming a part of the equivalent for the cession of Louisiana;" I was, therefore, right, in not separating them, when my object was to prove that neither of them was considered in any respect as forming a part of the equivalents for the cession of Louisiana; and although the question of constitutionality cannot, in any case, concern France, it was proper that I should establish its having been completely settled in 1803; and that I was not alone of opinion that Louisiana was property ceded, "*with particular reservation, with a condition which the party ceding had a right to require, and to which the United States had a right to assent.*" It makes but little difference what particular article of the treaty gave rise to the speeches cited, if they had a full bearing on the whole convention, and if every argument adduced on the 7th article is, *a fortiori*, applicable to the 8th. The 7th and 8th articles are both a *part of the equivalents for the cession*, or, rather, they are reservations of rights of property.—France owed no reciprocity, and therefore it is that no reciprocity was stipulated on her part; it was no error or omission of the negotiators.

I read, sir, in your letter of the 15th, "in the latter part of your letter of the 30th of March, without abandoning this demand of *exclusive* favor, you *seem to admit* that the diminution of duties conceded to the vessels of several nations," in the ports of this Union, is not a favor but a bargain.—Now, sir, I admit nothing of the kind in my letter of the 30th—far from *seeming to admit* my expression, in the very phrase cited by you, sir, are *Te ne saurois admettre*, I cannot admit.

As to the question treated of in that letter, I shall confine myself to expressing again my surprise, that France should be denied, in the ports of the territory ceded by her, even those advantages which are granted to nations having no treaty or convention with the United States. *Those nations, you say, sir, have passed no laws excluding the vessels of the United States from carrying to their ports the productions of their own soil, by the excessive aggravation of surcharges.* To this I shall answer, that France has done no such thing; and that her discriminating duties are far from having **operated like magic in favor of the ship-owners of France*, and have not even secured to her navigation a due share in the carrying trade. And, after all, where is it stipulated that France shall be treated in Louisiana upon the footing of the most favored nation, (as by the 8th article) only in case she shall make no regulations on navigation injurious to the interest of the United States, or which might be supposed, contrary thereto? Is not every nation free to regulate her own commerce and navigation as she sees fit? If her laws amount to prohibitions, if they appear unjust, if they are deemed injurious, it is, no doubt, allowable to adopt similar countervailing measures: but such measures on her part cannot make it justifiable to lose sight of the respect due to a sacred right of property, which is absolute in its nature, and is independent of all regulations of commerce and navigation.—Observe, moreover, sir, that French vessels are not treated in the ports of Louisiana either *upon the footing of the most favored nations, nor upon that of nations having no treaty or convention with the United States.† nor even upon the footing of those in whose ports the vessels of the United States are not ordinarily permitted to go and trade.* This requires no comment. You have stated, sir, that all the speeches cited by me tend to prove that there was no inconsistency between the federal constitution and certain conditions of the treaty of cession, "because Louisiana was acquired, not as a state, but as a territory: so that while she continued in the territorial or colonial condition, regulations of commerce different from those prescribed for the states of the Union, might be established in their ports, without contravening the constitution."—I have already answered this argument by stating the fact, that the 7th article, which, in your opinion, was judged to be compatible with

*These extra charges were sufficient to drive from our ports the greatest proportion of the foreign tonnage. All foreign nations were affected by the system we had adopted. It seemed to operate like magic in favor of the ship-owners of the United States.—(Dr. Seybert, on the American discriminating duties.)

† American tonnage law, article 1st.

the Constitution, so long only as Louisiana should continue to be a colony, received its full execution *during three years after Louisiana had become a state.*

To this you reply, that in this there was, in truth, a violation of the Constitution, "from which France has received no wrong, and of which she can have no motive to complain." But if we have adopted in Europe, as a monarchical principle, that *the King can do no wrong*, we also expressly admit, with Mr. Griswold, that the Legislature *cannot violate the Constitution, even for a day.* I look upon it as certain and indubitable, that Congress had not the desire, as it had not the power, to violate, *intentionally*, the Constitution, for a day, nor even for an hour. Besides, how can it be considered as a *transient, inadvertent departure* from the Constitution, that the unconstitutional execution of the 7th article should have place, not for a day, but for three years, while all the discussion which the speeches referred to had tended only to establish, that, in such case, there would, in fact, be a violation of the Constitution? You add, sir, "there was not, in any one of those speeches, the intimation of a doubt but that, when Louisiana should be admitted as a *state* into the Union, the regulations in her ports must be the same as in the ports of all her sister states;" and, in another part of your letter, you "again repeat, that, by the admission of Louisiana into the Union, her ports became subject to that provision of the Constitution which interdicts all preference to the ports of one state over those of another."

I think I have shewn, that this article of the constitution is not, in any case, applicable to the express stipulations of a sale and conveyance of property; and that it did not belong to France to examine that question. I could, perhaps, prove, also, that the two last assertions are not, in every point, rigorously correct. You will find, sir, that, in those very speeches, it has been questioned whether *all* the ports of the United States were, at that time, subject to the same commercial regulations. "By turning to our statute books, says Mr. Randolph, it will be perceived that, at present, there are some ports entitled to benefits which other ports do not enjoy." He shews, in another place, referring to a treaty between the United States and Great Britain, that several parts of the state of New York have a system of custom and duties peculiar to themselves; and "in this he says, gentlemen could not avail themselves of the distinction taken between a territory and state, even if they were so disposed, since the ports in question were *ports of a State.*"*

We see, besides, that Mr. Rodney's principal argument is grounded not on the article of the constitution mentioned by you, but on that which gives to Congress the power to *provide for the general welfare.*

* Mr. Randolph said that he did not mean to affirm that this exemption made by the treaty of London was constitutional; to solve that question was not his object; he would, however, observe, that France had a view in signing the treaty to ascertain whether all its articles were constitutional or not; since here, as well as elsewhere, the most enlightened men frequently disagree on certain points of legislation.

Let us conclude from these various instances that the question of constitutionality is foreign to that which we now discuss; that it is of little moment to know whether a state may or may not modify its administration of customs and duties; that even this point was discussed in 1803; that, whether questioned or not, the right of France remains still the same, because it is a right of property, *not a favor, but a bargain*; and, finally, that the least doubtful point in all human transactions, is the necessity of fulfilling *punctually and faithfully* all their conditions and stipulations.

As to the memoir of Mr. Livingston, its object, in your opinion, sir, was to convince the French Government that it was its interest, instead of taking possession of Louisiana, to put New Orleans into the hands of the United States. In the first place, I shall ask what would then have become of the territory, and whether, in such case, Mr. Livingston's object, which was to prevent every collision, to remove every motive of rivalry between the two nations, would have been fully accomplished; but every discussion on that subject would, I think, be quite useless, the perusal of the memoir being sufficient alone to remove every doubt. Its very basis is this question: "Is it the interest of France to take possession of Louisiana?"

It runs from beginning to end on that subject, and no other. If, in one paragraph it proposes to put the United States in possession of New Orleans, it is palpable, from that very paragraph, and from the following, that the *memoir* refers not to New Orleans alone, but to the whole of Louisiana. Let us cite some passages. "Who, then, will be willing to cultivate *Louisiana* with slaves?" "*Louisiana* is surrounded by an immense wilderness." "What advantage can France derive from settling *that Colony*?" "The productions of *Louisiana* being the same with those of the Antiles, &c. &c. it grows to evidence that, with respect to commerce, the settling (colonization) of *Louisiana* would be prejudicial to France, since it would deprive her other colonies of capitals which might be more usefully employed there."

"The possession of *Louisiana* is, however, very important to France, if she applies it to the only use which sound policy would seem to approve. I speak of *Louisiana* only, and in this I do not mean to comprehend the Floridas, because I think they are no part of the cession; as she can acquire by this cession the right to carry on the Mississippi a free trade," &c. &c.

Further, after having taken pains to explain all the advantages which France is to derive from the cession of *Louisiana* to the United States, Mr. Livingston adds: "All this can take place only by the cession of New Orleans to the United States, with the reserve of the right of entry at all times, free from all other duties than those paid by American vessels, together with the right of navigation on the Mississippi."

It becomes evident, that he means the cession of the whole of *Louisiana*, since he advises France to secure to herself the navigation on the Mississippi: for, how could this stipulation have been necessary, if she were to have retained possession of the western shore? In which

cases does Mr. Livingston mention New Orleans only? It is when he speaks of a free port, and of securing a free access to French vessels and merchandise. And, in these particulars, it is plain that he could not express himself otherwise, New Orleans being, at that time, the only port of Louisiana.

But, what is the object of all the arguments of the Minister of the United States? To dissuade France from taking possession of *Louisiana*; to prove, that, under her government, *Louisiana* never would, nor ever could flourish; that, not only in relation to commerce, but also with respect to policy, the settling of Louisiana could not be profitable to her; that she would find greater advantages in securing to herself the solid friendship of the United States, than in the acquisition of a territory which would become a source of *rivalship*; that she ought not to change a natural ally from a warm friend, into a suspicious and jealous neighbor, &c. &c. What is Mr. Livingston's conclusion? That, by adopting his opinion, France would easily be able to introduce into the Western Country the products of her manufactures, which the United States would have no interest to prevent, every cause of *rivalship* between the two nations being thus removed.

What more, I ask, can be wanting, to prove that the memoir relates not to the cession of New Orleans alone, but to that of the whole territory of Louisiana?

You observe, that Mr. Livingston proposes to France to cede New Orleans to the United States, to be taken possession of by them, not as an independent and sovereign state, but *merely* on the same colonial condition it was held in by Spain, and as it would have been held by France, had she taken and retained possession of the province.

To this I can make no other answer, than that I have not been able, even on the closest examination, to discover any such thing expressed in the memoir. The word *merely* is not to be seen there, any more than the word *exclusively* in the eighth article of the treaty. There is nothing in the memorial that could suggest the idea of Louisiana continuing under the colonial condition, when belonging to the United States.

You do me honor to state, sir, that Mr. Livingston's memoir was presented to the French Government in August, 1802; and yet I read, in another part of your letter, that it was written at a time when even the treaty, ceding Louisiana to France, was not concluded. In this there is error of date, since the treaty of St. Ildephonso, by which Spain ceded the colony, or province of Louisiana, to France, was signed on the 1st of October, 1800, as is stated in the convention of 1803, and in all the other documents of that period, which give it a date more than twenty months' anterior to Mr. Livingston's memoir.

The error which you think you have found in the citation of page 32 of my letter of the 15th May, does not exist. I have now the honor to send you a copy of the original memoir, addressed in Mr. Livingston's own hand writing to the French Government; you will there find the word *possession*, and not *cession*, of Louisiana, in the paragraph alluded to.

In my letter of the 15th of May, I called to mind what, even at the time of the cession, was the acknowledged value of the territory ceded by France, and cited not only the opinions of various writers, but also those of several distinguished members of Congress. To this you reply, that "all those estimates were formed under impressions that the extent of the Louisiana cession was vastly more comprehensive than the subsequent declarations and efforts of the French Government would have made it."

I do not know to what subsequent declaration you allude.

In the first article of the treaty, it is expressly stated that the French Government cedes Louisiana, "*in order to give the United States a remarkable proof of friendship.*" In all these subsequent declarations, I find expressions of the same good will and friendly dispositions combined with a sense of justice from which even friendship should never depart. As to the *efforts of the French Government*, as you do not specify them, nor indicate of what description they were, I wish to persuade myself, Sir, that you thereby allude to those efforts, which, on more than one important occasion, within the last forty-three years, France has taken a pleasure in making to promote the prosperity of the United States.

What were the real motives which induced the French government not to retain Louisiana? I see no other, nor can discover any, but those expressed in the treaty, and therefore I shall not discuss this point. I can, however, assert, that France has, at all times, proved that she could do much for her friends, and had little fear of her enemies. For this reason, "*the opinion so forcibly urged in the memoir of Mr. Livingston, has made but little impression on my mind, and, if such a question were not irrelevant to the present subject of discussion, I believe that I could easily shew that France could have retained her territory of Louisiana, as well in war as in peace.*"

I cannot conclude better than by citing, in support of my cause, the words of a celebrated statesman, whose opinions I have already had occasion to quote, and must be received as authority every where, and on every occasion.

Opinion of Mr. Madison in 1794.

"The fifteenth article, Mr. Chairman, has another extraordinary feature, which I should imagine must strike every observer. In the treaties which profess to put us on the footing of the most favored nation, it is stipulated that, where new favors are granted to a particular nation, in return for favors received, the party claiming the new favor shall pay the price of it. This is just and proper where the footing of the most favored nation is established at all. But this article gives to Great Britain the full benefit of all privileges that may be granted to any other nation, without requiring from her the same equivalent privileges with those granted by such nation. Hence, it would happen, that if Spain, Portugal, or France, should open their colonial ports to the United States, in consideration of certain privileges, in our trade, the same privileges would result *gratis* and *ipso facto* to Great Britain.*

*Mr. Madison's speech, British Treaty, 15th April, 1792.

The present claim of France is the same, or rather it is better, since it grows not out of a Commercial Convention, but out of a contract of sale, and since France has, in fact, already paid for her privilege, while England, in the instance cited, would have given no consideration; still, however, Mr. Madison says that England must, by the terms of the article, obtain *gratis* and *ipso facto* every right or privilege granted to any other nation, whether *gratuitously* or for an *equivalent*. From all which I conclude, sir, that France has a right to enjoy *gratis* and *ipso facto* the privilege reserved to her by the 8th article of the Louisiana treaty.

When so able an advocate as Mr. Madison has taken up my defence, I need say no more.

I have honor to be, &c. &c.

G. HYDE DE NEUVILLE.

No. 20.

Baron de Neuville to the Secretary of State,

WASHINGTON, October 15, 1821.

[TRANSLATION.]

SIR: I have received fresh instructions from my Government requiring me to insist upon the execution of the 8th article of the Louisiana treaty, or to demand at least that, in the mean time, our shipping be made to enjoy, in the ports of the Territory ceded by France, all the privileges and advantages which are granted in the same ports to such nations as have no treaty or convention with the United States.

On this subject I must again refer to my letter of the 30th of March last. Considering, however, that, at the date of these instructions, my Government was not informed of the present state of the negotiation, and being solicitous to make all possible exertion for the removal of every difficulty to the negotiation, I have the honor again to propose (in case you should persist in your opinion on the Louisiana question, as I adhere to mine,) that we enter into the agreement suggested in my letter of June 30th, and 3d of August.

Accept, &c. &c. &c.

G. HYDE DE NEUVILLE.

No. 21.

Extract of a letter (No. 233) from Mr. Gallatin to Mr. Adams, dated 24th September, 1822.

"I had yesterday a conference with Mr. de Villèle on the subject of our claims. He expressed his wish that a general arrangement

might take place, embracing all the subjects of discussion between the two countries; stated those to be the reclamations of the United States for spoliations on their trade; those of France on account of Beaumarchais' claim, and of the vessels captured on the coast of Africa, and the question arising under the Louisiana treaty; and asked whether I was prepared to negotiate upon all these points. I answered that I was ready to discuss them all, but that I must object to uniting the Louisiana question to that of claims for indemnity, as they were essentially distinct, and as I thought that, after all that had passed, we had a right to expect that no farther obstacle should be thrown in the discussion of our claims by connecting it with subjects foreign to them. Mr. de Villèle appeared to acquiesce in that observation."

No. 22.

Extract of a letter, No. 236, from Mr. Gallatin to Mr. Adams, dated 13th November, 1822.

"I received, on the 8th instant, a letter of Mr. de Villèle of the 6th, a copy of which is enclosed, together with that of my answer of the 12th.

"There is no doubt that the attempt to blend the discussion, respecting the claims, with that concerning the construction of the 8th article of the Louisiana treaty, is intended to postpone, if not to defeat, the first object. It must have been presumed that I could not have powers on the Louisiana question; and that, in case I had, they could not be such as to authorize me to acquiesce in the construction contended for by France. From the tenor of the letter, as well as from other circumstances, I am inclined to think that Government will persevere in insisting that the two subjects should be united in the same negotiation. I had received a suggestion, to that effect, from a respectable quarter, and I beg leave, also, to refer to the semi-official article in the *Journal des Débats*, of the 8th instant, observing, that that paper is considered as the organ of Mr. de Villèle's sentiments.

"It will now remain for the President to decide whether it is proper to send me powers on the subject of the Louisiana treaty; and, in that case, whether it is for the interest of the United States to purchase the annulment of the 8th article. That this Government means to make their claim under it, an offset against the just demands of our citizens is obvious to me. Yet, as I may be mistaken, and as a change of Ministry, or some unforeseen circumstances, may, unexpectedly, give an opportunity of making an arrangement, I beg leave again to refer to the several letters in which I have applied for instructions on that subject."

No. 22.—a.

Mr. Villèle to Mr. Gallatin.

[TRANSLATION.]

Paris, Nov. 6, 1822.

SIR: The convention concluded at Washington, on the 24th of June last, has removed the obstacles which momentarily fettered the relations of commerce between France and the United States. Although this convention is only temporary, it produces the expectation of a treaty more extensive and more durable. It is intended to leave proper time for discussing and establishing this treaty upon bases the most conformable to the interests of the two states. The communications are already opened on both sides upon the most amicable footing. His Majesty has seen, with satisfaction, this happy effect of the arrangement concluded in his name and in the name of the United States.

If any partial difficulties still remain to be cleared, they will be easily settled between two powers that are sincerely desirous of establishing their relations on the most perfect equity.

It is in this spirit of reciprocal justice, I have received the claims which you have done me the honor to transmit to me, and that, without prejudging any thing in their regard, I ought, above all, sir, to remark to you, that France has also claims pending, or to produce against the Government of the United States. It would appear, agreeable to the interest of the two parties and to the reciprocity of justice and of protection to which the subjects of the two states have equally a right, that these affairs should be examined and arranged in concert by way of negotiation.

The intention of his Majesty would be, that these claims and the other points in question, on which the convention of the 24th June has not pronounced, might be the object of that negotiation, in order to terminate, simultaneously, and in a definitive manner, every dispute between the two States, especially that which concerns the duties received in Louisiana, upon the French commerce, contrary to the tenor of the 8th article of the treaty of cession.

You will see, sir, in this intention of his Majesty, only the most steadfast desire of leaving, in future, no cause or pretext of misunderstanding or of complaints between the two states, and on the part of their respective subjects.

If you are authorized, sir, to pursue this march, I pray you to let me know it, and I will hasten to demand of the king the powers necessary for a negotiator charged to treat of it with you.

If you are also authorized to sign a consular convention, the same Plenipotentiary would receive the powers, ad hoc, for pursuing also the negotiation.

Accept, sir, the assurances of the high consideration, &c.

JH. DE VILLELE.

*The Minister of Finance, charged, ad interim,
with the Port Folio of Foreign Affairs.*

No 22--b.

*Mr. Gallatin to Mr. de Villele.**Paris, November 12th, 1822.*

SIR: I had the honor to receive your Excellency's letter of the 6th instant.

I have special powers to negotiate a convention, providing for the just claims of citizens of the United States against France, as also for the like claims of French subjects against the United States, with such person or persons as may have a like authority from His Most Christian Majesty.

As minister of the United States, I am authorized to discuss the question respecting the construction of the 8th article of the Louisiana treaty, and to give and receive explanations on that subject. But the negotiation on that point having been transferred to Washington, no special powers, in that respect, have been transmitted to me. I had understood, in the course of the conference I had the honor to have with your Excellency on the 23d of September, and had accordingly written to my Government, that it was not intended to insist that that subject should be blended with that of private claims. It is, indeed, obvious that it would be utterly unjust to make the admission of these to depend on the result of a negotiation on a subject with which they have no connection whatever, and the difficulties respecting which are of a date posterior to that of the claims.

All the representations which His Majesty's Government has made to that of the United States, whether on private or on public subjects, have uniformly been taken into consideration, and received that attention to which they were so justly entitled. In no instance has the Government of the United States declined to open a discussion on any subject thus offered to their consideration by France, or made it a preliminary condition, that the discussion should also embrace some other subject in which they might happen to take a greater interest. The question respecting the 8th article of the Louisiana treaty has, in particular, been the subject of a voluminous correspondence, in the course of which, the arguments in support of the construction insisted on by each party, respectively, were made known to the other. I have, in the meanwhile, for six years, made unceasing application to His Majesty's Government for the settlement of claims to a vast amount, affecting the interest of numerous individuals, and arising from flagrant violations of the law of nations and of the rights of the United States, without having ever been able to obtain, to this day, satisfaction, in a single instance, or even that the subject should be taken into consideration and discussed. After so many vexatious delays, for which different causes have, at different times, been assigned, it cannot now be intended again to postpone the investigation of that subject, by insisting that it should be treated in connection with one foreign to it, and which has already been discussed. The United States have, at least, the right to ask that their demands should also

be examined and discussed, and I trust that since I am authorized to treat as well concerning the claims of French subjects against the United States, as respecting those of American citizens against France, a distinct negotiation to that effect will be opened without any further delay.

Permit me, at the same time, to renew to your Excellency the assurances that the United States have the most earnest desire that every subject of difference between the two countries should be amicably arranged, and their commercial and political relations placed on the most friendly and solid footing. They will be ready to open again negotiations on the subject of the 8th article of the Louisiana treaty, and on every other which remains to be adjusted, and will have no objection that the seat of those negotiations should be transferred from Washington to this place.

Although my powers to treat respecting every subject connected with the commerce of the two countries may embrace that of a consular convention, yet, as this had not been contemplated by my Government, I am not, at this time, prepared to conclude an arrangement for that purpose.

I request your Excellency to accept the assurance, &c.

ALBERT GALLATIN.

No. 23.

Mr. Gallatin to Mr. Adams, No. 237.

PARIS, 19th November, 1822.

SIR: I received last night, and have the honor to enclose a copy of Mr. de Villele's answer, (dated 15th inst.) to my letter of the 12th. You will perceive that, without taking any notice of the reasons I had urged, why a distinct negotiation should be immediately opened, on the subject of the claims against both Governments; he insists that this shall be treated in connection with the question respecting the construction of the 8th article of the Louisiana treaty. The object is too obvious to require any comments on my part, and this final decision leaves me no other course than to refer the whole to my Government.

I have the honor to be, with great respect, sir, your most obedient servant.

ALBERT GALLATIN.

No. 23.—a.

Mr. de Villele to Mr. Gallatin.

[TRANSLATION.]

PARIS, 15th November, 1822.

SIR: You have done me the honor to announce to me, on the 12th of this month, that you were authorized to negotiate a convention, relative to the claims of American citizens against France, and to those of France against the United States; but that you have received no power to enter upon a negotiation concerning the interpretation of the 8th Article of the Louisiana Treaty.

The discussions which have ensued upon this last point between your Government and the Minister Plenipotentiary of the King, to the United States, having come to nothing, and this question remaining thus undecided, it is as proper as it is just to renew the examination of it: it touches upon too great interests not to be treated with renewed attention, and to be abandoned.

If a new arrangement takes place for the claims which are still in question, it ought to embrace them all, and the desire of the King's Government is to permit no difficulty to remain, and to leave nothing undecided in the relations of the two countries.

With this very motive, sir, I have demanded in the letter which I had the honor of addressing to you on the 6th of this month, that the negotiation to be opened upon the respective claims, should likewise include a consular convention. If your powers for discussing these different points should not appear to you sufficiently extended, for making them the object of a negotiation, I think, sir, that you will judge it proper to demand of your Government supplementary authority, for coming to an arrangement which can only have the utility proposed by the two Governments, by its embracing all the questions and claims which are still in dispute.

I can only refer, sir, upon this subject to the communications which I have had the honor of making to you on the 6th of this month, and with which you have doubtless made your Government acquainted.

Accept, sir, the assurance of my high consideration.

The Minister of Finance, charged ad interim
with the Port Folio of Foreign Affairs.

JH. De VILLELE.

No 24.

Mr. Gallatin to Mr. Adams, No. 241.

PARIS, 5th January, 1823.

SIR: I had, after his return from Verona, a conversation with the Duke of Montmorency, on our claims. I complained in strong terms

of the decision taken by Mr. de Villele, and said, that his insisting to connect that subject with the discussion respecting the construction of the 8th article of the Louisiana treaty, would be considered in the United States as an attempt to avoid altogether the payment of the indemnities due to our citizens. I then stated, that the reluctance evinced by the Government of France, to make a general arrangement on that subject, had induced the President to authorize me to make a separate application for the Antwerp claims; that what had now taken place, afforded an additional proof of the difficulties which stood in the way of a general transaction; and that, whilst this seemed indefinitely postponed. I hoped that the special application would at least be attended to, and receive a favorable decision.

The Duke, after some general observations on the earnest desire of France, that all the subjects of difference between the two countries should be definitively arranged, and declaring that this was the only motive for insisting on a negotiation embracing all those points, said that to take up at this time any special claim, appeared to him inconsistent with the official communication made to me by Mr. de Villele, and that we must wait at least till I had received an answer from my Government, to whom I must of course have transmitted the correspondence. He promised, however, to lay my request before the King's council, but without giving me any expectation that it would be favorably received.

It is probable that even this has been prevented by the Duke's resignation, which took place a few days after our conversation; and I think it quite useless to renew, at this time, the application to his successor Mr. de Chateaubriand. I will therefore wait till I receive your instructions in answer to my several despatches on this subject.

I have the honor to be,

With great respect, sir,

Your most obedient servant,

ALBERT GALLATIN.

No. 25.

Mr. Gallatin to Mr. Adams. No. 250.

PARIS, 27th February, 1825.

SIR: I had designedly abstained from answering Mr. de Villèle's last letter, of the 15th of November, in order to be able to avail myself of any change in the ministry, or of any other favorable circumstance which might arise. The more I have reflected on the ground assumed by this Government, on the subject of our claims, and on the attempt to connect their discussion with the question arising under the eighth article of the Louisiana treaty, the more I have felt satisfied

that it was impossible that the United States should depart from the true construction of that article, and acquiesce in that contended for by France, and that a renewed discussion on that subject would be unprofitable, and lead to no result whatever. As a last, but I believe, unavailing effort, I have concluded to express that conviction to the French Government, and have, accordingly, addressed, this day, to Mr. Chateaubriand the letter of which I have the honor to enclose a copy.

I have no doubt that there is not at this time any disposition to do us justice, and that if we were even to make some concessions, with respect to the article abovementioned, we could not succeed in making an arrangement, on the subject of the claims, satisfactory to the parties, or such as the Government of the United States would feel justified to accept. With that view of the subject, it appears to me evident that it is less disadvantageous to let the question rest for the present as it is, than to entangle ourselves by consenting to blend it with the discussion of the Louisiana treaty; whilst, on the other hand, the communication of this determination, coming from me, before any specific instructions can have been received from you, is less peremptory than if founded on these instructions, does not commit Government, and leaves the United States at liberty to resume, at a more favorable time, the negotiation on the ground which may then appear most eligible.

Independent of unforeseen circumstances which may alter the dispositions of this Government, I can perceive but one mode calculated to produce some effect. It is that the parties interested should petition Congress, and that there should be some marked expression of the sentiments of that body in their favor. The apathy of the great mass of the claimants, and the silence preserved in that respect, during so many years, in all our public discussions, have, undoubtedly, produced here the impression that very little interest was felt on that subject, and, in some degree, contributed in rendering our efforts to obtain justice unavailing.

I have the honor to be,

With great respect, sir,

Your most obedient servant,

ALBERT GALLATIN.

No. 25.—a.

Mr. Gallatin to Viscount de Chateaubriand.

PARIS, 27th February, 1823.

SIR: I had the honor to receive H. E. Count de Villele's letter of the 15th of November last, by which, notwithstanding the remonstrances

contained in mine of the 12th, H. E. being at that time charged with the Department of Foreign Affairs, still insisted that the discussion of the claims of individuals of both nations upon the two governments, respectively, should not take place unless it was connected with a renewed negotiation on the 8th article of the Louisiana treaty.

A conversation I had the honor to have with H. E. the Duke de Montmorency after his return from Verona, induced me to hope, although he did not encourage any expectation of a different result, that he would however again lay the subject before his majesty's council of ministers. This circumstance, the subsequent change in the department of foreign affairs, and the objects of primary importance which have heretofore necessarily engrossed your excellency's attention, have prevented an earlier official answer to H. E. Count de Villele's letter.

It has, together with the others on the same subject, as he had naturally anticipated, been of course transmitted to my government. But, on a review of the correspondence of Mr. Adams with Mr. Hyde de Neuville and with myself, I must express my perfect conviction, that the subject having been maturely examined and thoroughly discussed, there cannot be the least expectation that the United States will alter their view of it, or acquiesce in the construction put by His Majesty's minister on the 8th article of the Louisiana treaty.

It is not my intention at this moment to renew a discussion which seems to have been already exhausted; but I will beg leave simply to state the question to your excellency.

It was agreed by the article above mentioned, that the ships of France should forever be treated upon the footing of the most favored nation in the ports of Louisiana.

Vessels of certain foreign nations being now treated in the ports of the United States (including those of Louisiana) on the same footing with American vessels, in consideration of the American vessels being treated in the ports of those nations on the same footing with their own vessels; France has required that French vessels should, by virtue of the said article, be treated in the ports of Louisiana on the same footing with the vessels of those nations, without allowing on her part the consideration or reciprocal condition by virtue of which those vessels are thus treated.

The United States contend that the right to be treated upon the footing of the most favored nation, when not otherwise defined, and when expressed only in those words, is that, and can only be that, of being entitled to that treatment gratuitously, if such nation enjoys it gratuitously, and on paying the same equivalent if it has been granted in consideration of an equivalent. Setting aside every collateral matter and subsidiary argument, they say, that the article in question, expressed as it is, can have no other meaning, is susceptible of no other construction, for this plain and incontrovertible reason, that, if the French vessels were allowed to receive gratuitously the same treatment which those of certain other nations receive only in consideration of an equivalent, they would not be treated as the most fa-

vored nation, but more favorably than any other nation. And since the article must necessarily have the meaning contended for by the United States and no other, the omission or insertion of words to define it is wholly immaterial, a definition being necessary only when the expressions used are of doubtful import, and the insertion of words to that effect in some other treaties, belonging to that class of explanatory but superfluous phrases of which instances are to be found in so many treaties.

It might, indeed, have perhaps been sufficient to say, that, in point of fact, there was no most favored nation in the United States, the right enjoined by the vessels of certain foreign nations to be treated in the ports of the United States as American vessels, in consideration of American vessels receiving a similar treatment in the ports of those nations, not being a favor but a mere act of reciprocity.

Let me also, observe, that the pretension of France would, if admitted, leave no alternative to the United States than either to suffer the whole commerce between France and Louisiana to be carried exclusively in French vessels, or to renounce the right of making arrangements with other nations, deemed essential to our prosperity, and having for object not to lay restrictions on commerce but to remove them. If the meaning of the 8th article of the Louisiana treaty was such indeed as has been contended for on the part of France, the United States, bound to fulfil their engagements, must submit to the consequences, whatever these might be: but this having been proven not to be the case, the observation is made only to show that the United States never can, either for the sake of obtaining indemnities for their citizens, or from their anxious desire to settle, by conciliatory arrangements, all their differences with France, be brought to acquiesce in the erroneous construction put upon the article in question.

The proposal made by H. E. Mr. de Villele, in his letter of the 6th of November, and reiterated in that of the 15th, can therefore have no other effect than to produce unnecessary delays, and would, if persisted in, be tantamount to an indefinite postponement of the examination and settlement of the claims of the citizens of the United States. It will remain for his Majesty's Government to decide whether this determination be consistent with justice, whether the reclamations of private individuals should be thus adjourned because the two Governments happen to differ in opinion on a subject altogether foreign to those claims. Having nothing to add to my reiterated and unavailing applications on that subject, my only object at this moment has been to show that I cannot expect any instructions from my Government that will alter the state of the question.

I request your Excellency to accept the assurance, &c.

ALBERT GALLATIN.

No. 26.

Mr. Brown to Mr. Adams, No. 17.

PARIS, Nov. 29, 1824.

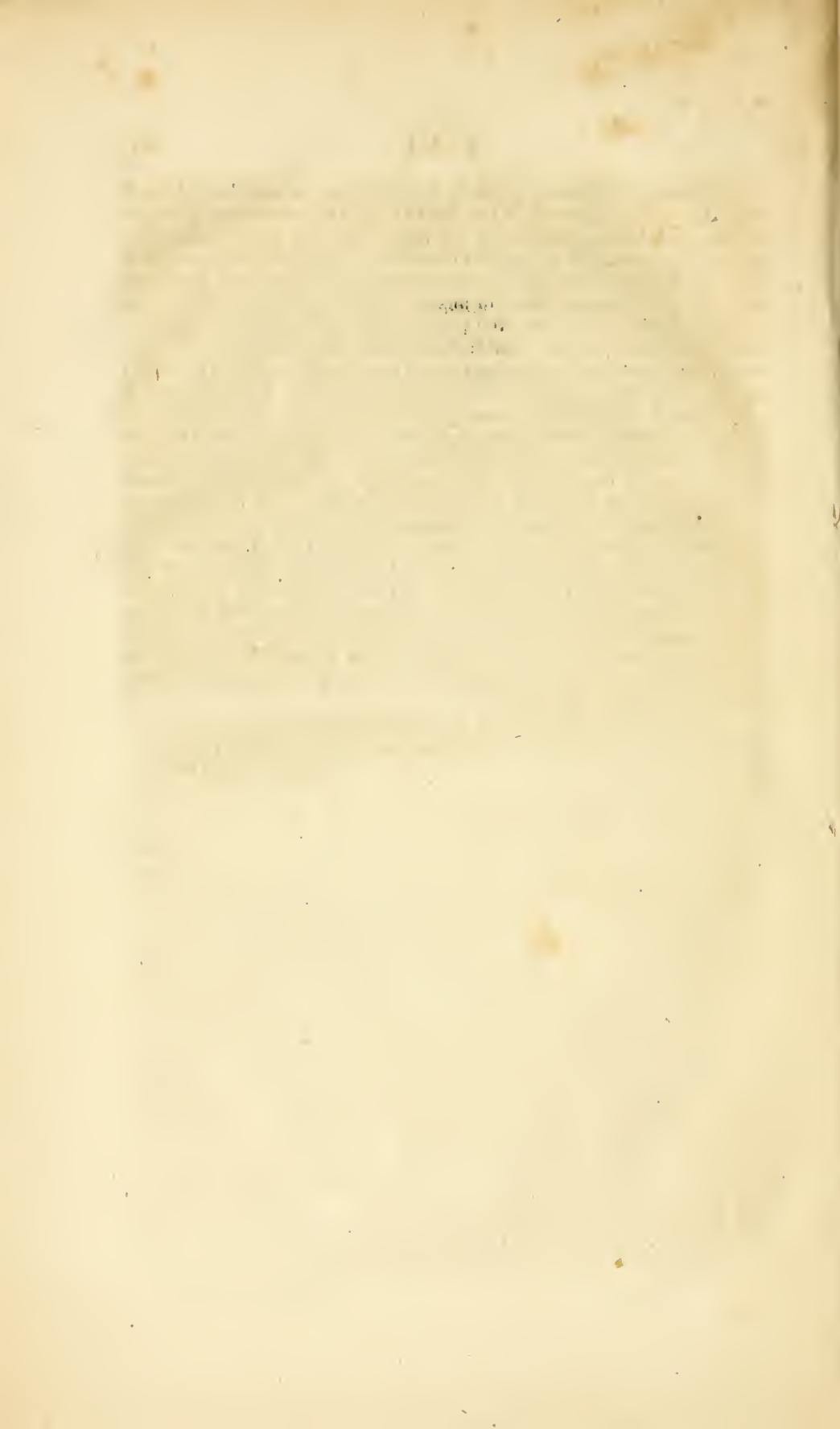
SIR: Not having received any answer to the letter which, on the 22d ultimo, I addressed to the Minister of Foreign Affairs, I sent him a note requesting that he would favor me with a conference at as early a day as his convenience would permit, and received his answer appointing the 25th instant for that purpose.

I waited upon him at the appointed hour, and after an interchange of the customary salutations, I reminded him that I had signified to him my wish to converse freely with him on the subject of the claims of American citizens on the Government of France, and that the state of my health alone had prevented me from asking a conference on that topic prior to the transmission of my letter of the 22d ultimo. I then, in a concise manner, called his attention to the state of the negotiation, and expressed my hope that the French Government would no longer arrest the progress of the discussion by insisting on connecting it with the question arising out of the 8th article of the Louisiana treaty. The two subjects, I contended, were entirely dissimilar in their nature; and, therefore, could not, with any degree of propriety, be embraced in the same discussion. In the one case, American citizens ask indemnity for their property, which has been taken from them under the authority of the French Government, and in opposition to the plainest principles of law and justice; in the other, the Governments of the United States and France disagree in their construction of an article in a treaty which has no relation to the question of claims. The justice of the claims of American citizens has never been denied by France, whilst the United States have not hitherto seen any reason to admit that France has any just claim under the 8th article of the Louisiana treaty. I asked him whether it was either just or reasonable that these claims should remain unsatisfied until the two Governments could agree in their interpretation of the treaty? Although the United States have been always ready to continue to discuss with France the question on the treaty, yet they cannot consent to connect it with claims for indemnity. I reminded him, that, in every instance in which France had presented a claim, either on behalf of the Government or her citizens, founded on any supposed injury done by the United States, the claim had been carefully considered, without entangling it with any other question, and, when well founded, had been admitted and settled; that the United States had a right to expect a corresponding course of fair conduct on the part of France, and, therefore, had seen with deep regret, the ground assumed in the present instance, and the delay consequent upon it. I concluded by expressing a hope that the negotiation for our claims, so long suspended, would be resumed, and repeated the offer already made, to embrace, in the same negotiation, any claims on the part of French subjects, against the Government of the United States.

The Baron de Damas replied, that the time which had elapsed since he had been placed at the head of the Department of Foreign Affairs, had been so short, and his immediate and indispensable duties so numerous, that he had not been able to make himself acquainted with the subject; that the correspondence was voluminous; and that, with the most earnest desire to answer my letter, he had not hitherto had the necessary time allowed him to give it even a cursory perusal; that, being unacquainted with the subject, he could not discuss it with me on equal ground, but that he hoped very shortly to give it a careful examination, and to send me a definitive answer. I asked him if I could hope for it in time to send by the next vessel. He said that he could not promise to send me an answer the next week, nor could he precisely say at what time I might expect it, but that I should have it as soon as he could find time to prepare it. I assigned as a reason for wishing to be furnished with an early answer, the call made on the Président by the House of Representatives at the last session. He said, he was already informed of the proceedings of that branch of our Legislature, and felt every disposition to bring the questions of difference between the two countries to a close as speedily as possible. The conference here terminated without the attainment of the object which induced me to ask it. I do not know at what precise time I may expect an answer to my letter, nor can I anticipate, from any thing which passed at the interview, what will be the nature of the answer which I may receive.

I have the honor to be, with great respect, sir,

Your most obedient and very humble servant,
JAMES BROWN.















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